

MEMORANDUM

Agenda Item No. 8(A)(1)

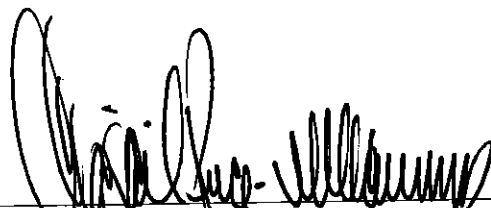
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: December 18, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution relating to Miami-Opa locka Executive Airport approving, subject to approval of the Federal Aviation Administration, a thirty-year development lease agreement between Miami-Dade County and Gate 301 Miami Inc. for construction of a Taxi Lane, Hangar, and Fueling Facility at Miami-Opa locka Executive Airport at an initial annual ground rent of \$115,521.00 and providing for an additional opportunity rent to the County; finding such development to be of aviation facilities; and authorizing the County Mayor to execute same, subject to approval of the Federal Aviation Administration, and to enforce the provisions of the lease agreement

The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



Abigail Price-Williams
County Attorney

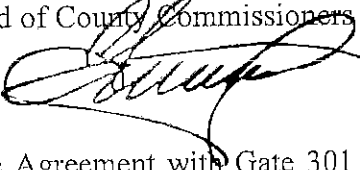
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Memorandum



Date: December 18, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Development Lease Agreement with Gate 301 Miami, Inc., for Construction of a Hangar and other Aviation Facilities at Miami-Opa Locka Executive Airport

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a 30-year Development Lease Agreement with Gate 301 Miami, Inc. (Gate 301), a wholly-owned subsidiary of Embassair Group US, Inc. (Embassair), for 10.2 acres on the southern portion of Miami-Opa Locka Executive Airport (OPF).

Gate 301 plans to construct an innovative hangar with a unique architectural design to provide security and privacy to business jet operators and their passengers, along with luxury reception and office areas and a fuel farm exclusively for their clients. Gate 301 will also construct a new taxiway on the southern portion of the airport for shared use with future tenants.

Scope

OPF is located within District 1, which is represented by Commissioner Barbara J. Jordan; however the impact of this item is countywide as OPF is a regional asset.

Fiscal Impact/Funding Source

The lease will generate revenue for the Miami-Dade Aviation Department (MDAD) over its 30-year plus five-year option term. Gate 301 will pay land rent for 10.2 acres in the amount of \$115,521 for the first year of the lease, to be adjusted annually based on appraised value and approval by the Board. With expected increases in appraised value over the 35 years, the land rent is expected to generate a minimum of \$6.6 million in revenue to the County. Starting in year six of the lease, Gate 301 will pay Opportunity Rent based on the value of the improvements constructed on the site that will total an additional \$9.5 million in revenue to the County over the 35 years of the lease. The total revenue to be received by the County over the lease term will be approximately \$16.1 million.

Gate 301 must invest a minimum of \$21 million on design and construction of the proposed hangar, office facility, fuel farm and new taxiway. The company expects to create 34 new full-time jobs in Miami-Dade County during the first year of operation with an average salary \$81,442. The company also expects to expand its U.S. headquarters at OPF a few years after opening the new facility and add another 20 to 25 full-time employees.

Track Record/Monitor

Parent company Embassair is an ongoing operation in Europe and is locating its U.S. headquarters and first U.S. facility in Miami-Dade County at OPF. MDAD General Aviation Business Development Coordinator Karen Wright will monitor the contract.

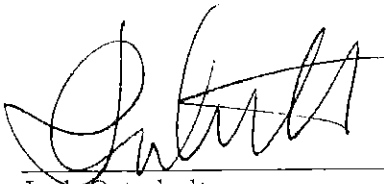
Background

Pursuant to Florida Statutes, Chapter 125.35(1) (b) 1, the Board may negotiate the lease of an airport or seaport facility.

Gate 301 requested the use of 10.2 acres on the unused southern portion of OPF to provide luxury hangar space for corporate business and private jet use. It will construct at its expense a hangar and office facility with a fuel farm for exclusive use by its clients. Gate 301 will also construct a new taxiway from its facility to provide access to the three OPF runways from the southern portion of the airport for the first time. Once constructed, this taxiway in the common areas of OPF may be used by potential new tenants that desire to locate on vacant parcels suitable for development on the southern portion of the airport.

In exchange for Gate 301's commitment to construct these new facilities and a new taxiway and pay Opportunity Rent commencing in the sixth year of the lease, MDAD is proposing this 30-year Development Lease Agreement with one five-year option. All improvements become the property of the County at the conclusion of the lease.

Since the development proposed by Gate 301 will help meet the demand for high-quality general aviation jet hangar and office facilities at OPF, it is recommended that the Board approve this development lease agreement, subject to final FAA approval.



Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: December 18, 2018

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)

12-18-18

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI-OPA LOCKA EXECUTIVE AIRPORT APPROVING, SUBJECT TO APPROVAL OF THE FEDERAL AVIATION ADMINISTRATION, A THIRTY-YEAR DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND GATE 301 MIAMI INC. FOR CONSTRUCTION OF A TAXI LANE, HANGAR, AND FUELING FACILITY AT MIAMI-OPA LOCKA EXECUTIVE AIRPORT AT AN INITIAL ANNUAL GROUND RENT OF \$115,521.00 AND PROVIDING FOR AN ADDITIONAL OPPORTUNITY RENT TO THE COUNTY; FINDING SUCH DEVELOPMENT TO BE OF AVIATION FACILITIES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME, SUBJECT TO APPROVAL OF THE FEDERAL AVIATION ADMINISTRATION, AND TO ENFORCE THE PROVISIONS OF THE LEASE AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Development Lease Agreement (the Agreement) between Miami-Dade County and Gate 301 Miami Inc. providing for construction of a Taxi Lane, Hangar, and Fueling Facility at Miami-Opa locka Executive Airport for a term of thirty years with an additional five-year extension period, generating initial ground rent in the amount of \$115,521.00 and payment of an additional Opportunity Rent to the County, is approved in substantially the form attached hereto, subject to the provisions of Section 4 of this Resolution.

Section 2. The facilities to be constructed pursuant to the lease are aviation facilities, as such term is used in Section 125.35(b), Fla. Stat.

Section 3. The County Mayor or County Mayor's designee is authorized to execute the Agreement in substantially the form attached hereto, subject to the provisions of Section 4 of this Resolution, and to enforce the provisions of the Agreement.

Section 4. The Agreement is subject to the approval of the Federal Aviation Administration, which approval is pending. Neither Section 1 nor Section 3 of this Resolution shall be effective until such time as the Federal Aviation Administration has approved the lease in substantially the form attached hereto. In the event that the Federal Aviation Administration requires material changes to the Agreement as a condition of approval, such modified Agreement shall be presented to this Board for approval.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Daniella Levine Cava	Jose "Pepe" Diaz
Sally A. Heyman	Eileen Higgins
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

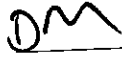
The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of December, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

Agreement No.: _____

Cust. No.: _____

**DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE
COUNTY, FLORIDA AND GATE 301 MIAMI, INC. (a wholly owned
subsidiary of Embassair Group US, Inc.), its successors, and
permitted assigns at MIAMI-OPA LOCKA EXECUTIVE AIRPORT**

THIS DEVELOPMENT LEASE AGREEMENT ("Agreement" or "Lease") is made and entered into as of the _____ day of _____, 2018 (the "Effective Date"), by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("Lessor" or "County"), and Gate 301 Miami, Inc., a corporation organized under the laws of Delaware (which is a wholly-owned subsidiary of Embassair Group US, Inc.), its successors and permitted assigns ("Lessee" or "Tenant," together with Lessor (or County), a "Party," and, collectively, the "Parties").

WITNESSETH

WHEREAS, the County is the owner of Miami-Opa Locka Executive Airport (known as the "Airport" or "OPF") and operates it through the County's Aviation Department (the "Department" or sometimes "MDAD"), and Lessee desires to develop a specific portion of such Airport for aviation and aeronautical purposes; and

WHEREAS, Lessee will construct at its expense a terminal and office facility (the "Terminal Building"), together with related facilities and a designated portion of a taxiway (the "Development Activities"), consisting of a total of 10.2 acres, more or less, as reflected on Exhibit A, which Lessee shall occupy for a thirty (30)-year period with one (1) five (5)-year option under the terms of this Agreement; and

WHEREAS, Lessee acknowledges that all Development Activity must occur in strict compliance with requirements of the Federal Aviation Administration ("FAA") and in compliance with all regulatory requirements of the State of Florida and the County, and that this Agreement is expressly subject to such regulatory reviews and acceptances in accordance with the provisions of this Agreement;

NOW THEREFORE, for and in consideration of the foregoing premises, and of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1

Term and Premises

1.01 Term:

(A) The Lessor hereby leases to the Lessee, and the Lessee leases from the Lessor, that certain parcel, more particularly described in Exhibit A (the "Premises"), consisting of approximately 10.2 acres, more or less, for the purposes and uses set forth in Article 2 (Use of Premises) and Article 4 (Improvements to Premises); with the right of Lessee to construct or cause to be constructed and thereafter occupy and make use of the Improvements as described in

Article 4 (Improvements to Premises and Other), all for an Initial lease term of thirty (30) years from the Lease Commencement Date (the "Initial Lease Term"), plus, at Tenant's option, one (1) extension term of five (5) years from the expiration of the Initial Lease Term (the "Extension Term, and together with the Initial Lease Term, the "Term" or the "Lease Term").

(B) The Lease Term shall commence on the Lease Commencement Date. The "Lease Commencement Date" shall be the date on which the Lease has been fully executed and approved by the Board of County Commissioners of Miami-Dade County, Florida ("BCC"). In the event that: (i) Lessee has not obtained all permits for the construction and operation of the Improvements within, or if any appeals on any such permits are pending as of, three hundred and sixty-five (365) calendar days following the Lease Commencement Date, due to no fault of Tenant, Tenant shall have the right to terminate this Lease, by delivering written notice to Lessor, setting forth the effective date of such termination, in which case, this Lease shall be terminated, and shall be null, void, and of no further force or effect, in which case, the Parties shall be relieved of their respective obligations hereunder; or (ii) Tenant discovers unforeseen conditions affecting the Premises, which would impose an unreasonable burden upon Tenant, Tenant shall have the right to terminate the Lease, by delivering written notice to Lessor, setting forth the effective date of such termination, in which case, this Lease shall be terminated, and shall be null, void and of no further force or effect, in which case, the Parties shall be relieved of their respective obligations hereunder; provided however, the right to terminate the Lease in sub-article (ii) hereof shall expire ninety (90) calendar days following the date which is the latter of: (a) the date on which all permits for the construction and operation of the Improvements have been issued, and (b) the date on which all appeal periods have expired, with no appeals pending, and all appeals, if any, having been determined pursuant to a final, non-appealable judgment of a court of competent jurisdiction.

The "Rent Commencement Date" shall be the date which is the earlier of (i) six hundred and thirty (630) calendar days following the date on which all permits for the construction and operation of the Improvements have been obtained, with all appeal periods pertaining thereto having expired, and no appeals pending, and all appeals, if any, having been determined pursuant to a final, non-appealable judgment of a court of competent jurisdiction, or (ii) the date upon which Beneficial Occupancy of the Improvements has been achieved. Initial Land Rent (as defined herein) shall commence not later than seven hundred and thirty (730) days from Lease Commencement Date.

"Beneficial Occupancy" of the Improvements shall be deemed to have been achieved by Lessee on the date which is the later of: (i) the date upon which the Temporary Certificate of Occupancy, or Certificate of Completion, as the case may be, has been issued for the Improvements by the County, or (ii) the date upon which the Improvements can be used for their intended purposes, in compliance with all permits and Applicable Laws.

1.02 Investment: The Lessee shall expend as a minimum development investment TWENTY-ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$21,250,000.00) (the "Investment") including all hard and soft costs associated with the design and construction of the Improvements located on the Premises and the new off-Premises Taxi Lane (as defined in Section 4.01(A)).

1.03 Premises, Improvements to be Constructed: The preliminary layout of the Improvements (as defined in Article 4.01 (Improvements to the Premises and Other), on the Premises, is shown in Exhibit A. The Premises is net of, and excluding, the areas of the south public access road and the utility easement, each as set forth and depicted on Exhibit A hereto. The Lessor shall, at all times during the Term, maintain, at no cost to Lessee, such south public access road and such utility easement to the same standards as the Lessor is required to maintain Off-Premises Improvements pursuant to Article 4.01(D).

Prior to, and during, construction of the Improvements, the Lessee shall have the right to make non-material modifications to the layout of such Improvements, so long as such modifications are generally consistent with the layout of the

Improvements on Exhibit A, without the consent of MDAD. In the event that FAA approval is required with respect to any such non-material modification, MDAD shall reasonably cooperate with Lessee in obtaining such approval.

Subsequent to Beneficial Occupancy, Lessee shall have the right to make non-material modifications to such Improvements, so long as such modifications are generally consistent with the layout of such Improvements, without the consent of MDAD. In the event that FAA approval is required with respect to any such non-material modification, MDAD shall reasonably cooperate with Lessee in obtaining such approval.

The Parties expressly agree that the design and layout of the Taxi Lane as shown on the attached Exhibit A is not final, and is subject to the review and consent of the Federal Aviation Administration and the Authorities Having Jurisdiction (as defined in Section 4.02(A)).

The Parties acknowledge that the Terminal Building shall be given a specific building number by MDAD for identification purposes upon Beneficial Occupancy and that, if Lessee makes use of such Terminal Facility after the conclusion of the Term, the terms of Article 3.04 (Holdover) of this Lease shall apply.

1.04 Suitability of Premises: The Lessee acknowledges that (a) the Lessor has made no representations as to the Premises or the suitability of the Premises for the purposes of the Lessee, (b) except as set forth in this Agreement, the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, cleanups, painting, or the like of the Premises which are leased in an as is condition, except to the extent of Lessor's responsibilities for environmental conditions under Article 8, (c) Lessee has made, or shall make pursuant to the terms hereof, whatever site inspections it deems necessary so as to be apprised of the conditions of the Premises, both above ground and below ground, and has made, or shall make, its own determination that the Premises are suitable for its intended use (d) Lessee has reviewed all documents provided by Lessor to Lessee which are applicable to the Premises and the adjacent areas of OPF. Except as set forth herein, Lessee has otherwise satisfied or shall satisfy itself that the conditions of the Premises and utilities in their current state are satisfactory to the Lessee. The Lessee's obligation under this Agreement, such as in Article 7.01(B) (Permits and Licenses), to obtain all land use, construction, and operating permits and approvals required of the Lessee at the Lessee's sole cost and expense, shall not require the Lessor to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits and approvals, including, but not limited to, certificates of occupancy, which shall remain the Lessee's exclusive obligation to take or perform in order to obtain such permits and approvals; provided that the Lessor shall reasonably cooperate with Lessee regarding obtaining such permits and approvals. Subject to Lessor's obligations regarding environmental matters as set forth in Article 8, the Lessee further acknowledges that, by executing this Lease, the Lessee at its own cost, risk, and expense must make the necessary investments and all Improvements to the Premises, including all Infrastructure Improvements and utilities services necessary for Lessee's construction and use of the Premises, to make the Premises suitable for the Lessee's use and to satisfy the County's building, life, safety, fire and occupancy requirements, and that the Lessor shall have no obligation to Lessee to compensate or reimburse Lessee for such cost, risk, expense, investment, and improvements. Lessor expressly disclaims any representation or warranty as to the permissible location, cost, or constructability of the Taxi Lane.

1.05 Title to Improvements; Standards of Construction: Unless Lessee's financing documents require otherwise, Lessee shall have the option, to be exercised not later than sixty (60) days of the Lease Commencement Date, of (i) placing in the name of the County all Improvements installed or constructed by Lessee, free and clear of all liens and encumbrances, except for any financial interests or liens but only if such interests or liens are expressly approved by the County prior to the transfer of title, or (ii) retaining title to such improvements in Lessee's name for the duration of the Term. For any improvement, the title to which is to be placed in County's name, Lessee shall comply with the more stringent design and construction standards set forth by the Department from time to time to assure that the Improvement will remain in satisfactory condition during the Term and will have a reasonable useful life following the termination of this Agreement. For any Improvement the title to which is to remain in Lessee's name, Lessee shall be entitled to use modified standards for its design and construction, as approved by the Department, but must nonetheless comply with all applicable

building, fire, and life/safety codes, comply with the Department's requirements under Article 4.14 (Standards of Construction) as to the useful life of the Improvements.

1.06 Development Schedule and Failure to Develop. Lessor has granted Lessee this Agreement for the Term hereof on the basis of Lessee's assurance that Lessee will expend not less than the Investment (as set forth in Article 1.02 (Investment) hereof) for the design and construction of improvements on the Premises in accordance with the Lessee's Development Schedule (as defined herein).

Lessee shall achieve Beneficial Occupancy within 910 calendar days following the Lease Commencement Date, provided that: (i) permits required for construction and operation of the improvements have been issued on or before the date that is three hundred and sixty-five (365) calendar days from the Lease Commencement Date, and (ii) this period of time shall be extended automatically for Force Majeure. For the avoidance of doubt, notwithstanding anything contained in this Lease to the contrary, any failure to obtain permits required for construction and operation of the improvements on or before the date set forth above, due to the fault of MDAD, shall be deemed to be a Force Majeure event. Notwithstanding anything contained in this Lease to the contrary, except to the extent that delays are caused by Force Majeure events, Beneficial Occupancy must be achieved within 1276 calendar days.

In the event that Beneficial Occupancy has not been achieved within the time period above, Lessor shall be entitled to terminate this Lease, as provided in Article 4.05.

1.07 Review by FAA: This Agreement is subject to the review of the Federal Aviation Administration (FAA), and shall not be effective until completion of such FAA review and the Parties' acceptance of any changes hereto required or necessary as a result of the FAA review. If the FAA indicates that any portion of this Agreement is not consistent with the requirements of federal law or grant assurances, or else raises an objection to any portion of this Agreement, the Department shall have the right in its reasonable discretion to either declare this Agreement to be null and void or else to change the terms of this Agreement so as to overcome the reasons for the FAA's statements or objections and submit to the Lessee this Agreement as so changed. In the latter event, Lessee shall respond to such proposed changes promptly and in any case not later than sixty (60) days from the date of submission by the Department. If the Lessee accepts such changes, the Parties will execute a new Agreement as changed, subject again to FAA review. At any time following the FAA's initial review of this Agreement in which the FAA made statements or else raised concerns about the terms of the Agreement, the Department may in its reasonable discretion determine that it is in the best interests of the County to lease the Premises to another party on terms that would be acceptable to the FAA, and upon such determination, whatever rights Lessee may have hereunder shall cease upon Lessee's receipt of such statement of determination. No compensation of any sort shall be payable to Lessee in the event that (a) the Department declares this Agreement to be null and void, (b) the Department makes in its reasonable discretion a determination to lease the Premises to another party, or (c) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

1.08 Nothing herein shall be construed to limit or waive Lessor's rights to condemn the Premises or this Agreement, or to effect same through eminent domain, or as otherwise may be provided for at law.

ARTICLE 2 **Use of Premises**

2.01 General Privileges, Uses and Rights The Lessor hereby grants to the Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth or otherwise applicable to Lessee's use of any portion of the Airport, and all of which shall be non-exclusive on the Airport.

(A) The general use, in common with others, of all public Airport facilities and improvements, which are now or may hereafter be connected with or appurtenant to said Airport, to be used by the Lessee in connection with its

operations hereunder. For the purpose of this Agreement, "public Airport facilities" shall include all public non-airfield areas, including, but not limited to, automobile parking areas, roadways, sidewalks, other public facilities appurtenant to said Airport, not specifically leased hereunder. Nothing contained herein shall in any way limit the right of the County in its sole discretion to abandon, discontinue or demolish any of the public Airport facilities described herein, subject to the terms hereof; provided, however, notwithstanding the foregoing, during the Term, the County shall not have the right to abandon, discontinue or demolish the Taxi Lane, without providing corresponding replacement public Airport facilities that are satisfactory for the Lessee's uses and operations under this Lease.

(B) The right of ingress to and egress from the Premises over and across public roadways serving the Airport for the Lessee, its agents and employees, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to Applicable Laws, promulgated as of the Effective Date, or as may hereafter apply with respect to life-safety matters and security requirements mandated by any Authority Having Jurisdiction. In no event shall Lessor be entitled to impose any fees or charges on Lessee related, in any manner, to the exercise of Lessee's rights granted under this Lease, except fees and charges established pursuant to Articles 2.04, 2.05, 3.10 and 3.11, fees imposed on Lessee by constituent Departments of the County providing services to Lessee (including but not limited to Solid Waste and/or Water and Sewer), and fees imposed by any Authority Having Jurisdiction in a regulatory capacity.

(C) Use of Terminal Facility: Lessee shall use the Terminal Facility, and shall require all tenants using Terminal Facilities, to comply with MDAD's requirements as to proper Terminal Facility use, as MDAD modifies, alters, or adds to such requirements from time to time. As to personal property that may be stored at the Terminal Facility, the following may be stored or used at the Terminal Facility unless otherwise advised and/or approved by MDAD:

- (1) A reasonable amount of aviation oil and fluids in approved containers sufficient to service the Aircraft in the immediate future.
- (2) A reasonable amount of cleaning materials and liquids to be used solely for cleaning the Aircraft and the Terminal Facility itself.
- (3) Intentionally omitted.
- (4) A tool box containing appropriate Aircraft maintenance tools for the Aircraft being stored at the Terminal Facility, along with a reasonable amount of materials and replacement parts reasonably needed for maintenance of such Aircraft, including, but not limited to, work stands and diagnostic and other testing equipment.
- (5) Motorized vehicle(s) to tow the craft.

Nothing herein contained shall be construed to grant to the Lessee the right to use any other space or area improved or unimproved which is leased to a third Party, or which the County has not specifically leased to the Lessee.

2.02 Use of Premises: The Lessee shall use the Premises for the purpose of Fixed Base Operations (FBO) and aircraft storage, as well as uses incidental thereto and otherwise permitted under Applicable Laws, including, without limitation, hospitality areas for passengers and crew (the "Permitted Uses"). Fueling of aircraft shall only be permitted for aircraft and rotorcraft (collectively, "Aircraft") that are users or clients of Lessee utilizing the Improvements. All Permitted Uses shall be in accordance with MDAD's Minimum Standards, as may be established and amended from time to time. Such services and uses may be provided on the Premises, provided that the services and uses are provided in compliance with MDAD's Minimum Standards.

2.03 Non-Flyable Aircraft: In no instance shall any non-flyable Aircraft be parked or stored on the Premises for a period in excess of sixty (60) consecutive days, without the prior written approval of the Department. After such sixty (60)-day period, the Lessee shall remove any non-flyable Aircraft from the Premises within twenty (20) days, when notified in writing by the Department to do so, unless such Aircraft is then and there undergoing maintenance as authorized herein. Failure of the Lessee to remove non-flyable Aircraft within such twenty (20)-day period, Aircraft shall result in the

Department declaring said aircraft derelict and subject to removal pursuant to Chapter 25-10.24 of the Miami-Dade County Code, as well as the Department's termination of this Agreement.

2.04 Collection of Certain Fees and Charges: The Lessor reserves the right to establish fees for the landing, and parking, of all or special classes of Aircraft at the Airport. The Lessee, as a further consideration for this Agreement, shall be required, when directed, in writing, by the Lessor, to collect and promptly remit to the Lessor aviation fees and other aviation charges, approved by the County and payable to the Lessor. The method of collection and remittance of such fees and charges shall be as determined and directed by the Lessor, in writing. Lessee shall be in breach of this Agreement, if Lessee fails to make timely remittance of such aviation fees and other aviation charges to the Lessor, in accordance herewith, in which case, Lessor shall deliver to Lessee written notice of such breach, specifying the nature of such breach. If such breach continues for a period of sixty (60) days following the date of Lessee's receipt of such notice, or Lessee fails to diligently commence to cure such breach within such sixty (60)-day period, if such breach is of a nature that it cannot reasonably be cured within such sixty (60)-day period, Lessee shall be in default under this Agreement, and Lessor may terminate this Agreement by delivering written notice of termination to Lessee, specifying the effective date of termination, which effective date of termination shall be a date no earlier than thirty (30) business days following receipt by Lessee of Lessor's notice of termination. The Lessee shall be permitted to retain five percent (5%) of such fees and charges collected on behalf of the Lessor, which amount shall be considered as full and final payment to the Lessee for the cost of collecting and remitting the fees and charges, and shall not be considered as part of gross revenues earned by Lessee.

2.05 Concession Services: The Lessor reserves the right to establish fees and require permits for the operation of concessions, restaurants, car rentals, taxicab and other ground transportation services and other commercial activities at the Airport. In the event that the Lessor exercises such right with respect to Lessee, any such fees shall be charged to Lessee at fair market value, consistent with fees being charged by Lessor for similar concessions or activities to other tenants at OPF.

2.06 Lessee's Rights Not Exclusive: Notwithstanding anything herein contained that may be, or that may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and Lessor reserves the right to grant similar privileges and similar leases to other lessees on other parts of the Airport (other than the Premises) and to take any and all actions (including the leasing of property for any lawful purpose) that Lessor is permitted to take pursuant to Applicable Laws.

ARTICLE 3 **Rent and Payments**

3.01 Rental Charges:

A) Rent.

(1) As to the land which constitutes the Premises, Lessee shall pay to Lessor, on a monthly basis, land rent (land) ("Land Rent"), pavement rent ("Pavement Rent") and opportunity rent ("Opportunity Rent," together with Land Rent and Pavement Rent, the "Rent"). Land Rent and Pavement Rent shall be determined by the County as fair market value (FMV) rental rates established through appraisal and approved by the BCC. The Rent, commencing as described below, shall be payable monthly in U.S. funds, plus applicable state sales tax, as required by law, on the first day of each and every month as shown below, and without billing, at the offices of the Department as set forth in Article 3.05 (Address for Payments).

(2) Land Rent shall be the established rate by the BCC, as of the Rent Commencement Date, as defined herein. By way of example, the rate for Land Rent for fiscal year 2019 is \$0.26 per square foot. If the

Land Rent were to be payable as of the Effective Date, the Land Rent would be calculated as follows: 10.2 acres (444,312 s.f.) x \$0.26 per square foot. = \$115,521.12 per year. For the avoidance of doubt, Land Rent shall only be allocable to the Premises, and not to any real property located outside of the Premises. The Land Rent shall be adjusted annually by the appraisal process, as described in Article 3.03. The Land Rent shall be payable, in monthly installments, beginning on the Rent Commencement Date.

- (3) Pavement Rent shall be established by the BCC, as of the Rent Commencement Date. By way of example, the rate for Pavement Rent for fiscal year 2019 is \$.05 per square foot. If Pavement Rent were to be payable as of the Effective Date, the Pavement Rent would be calculated as follows: pavement of approximately 100,000 sq. ft. (to be confirmed by as-built survey) x \$.05 per square foot = Pavement Rent of \$5,000.00 per year. The Pavement Rent shall be payable, in monthly installments, beginning on the Rent Commencement Date.
- (4) Intentionally Omitted.
- (5) Opportunity Rent. Beginning on the first (1st) day of the 6th Year of the Lease, and extending to the last day of the 10th year of the Lease, Lessee shall pay \$200,000 per year in Opportunity Rent, to the Landlord; (ii) beginning on the first (1st) day of the 11th Year of the Lease, and extending to last day of the 25th year of the Lease, Lessee shall pay \$300,000, per year in Opportunity Rent, to the Landlord; and (iii) beginning on the first (1st) day of the 26th year of the Lease, and extending to the last day of the Lease Term, Lessee shall pay \$400,000 per year in Opportunity Rent, to the Landlord.

Following the Rent Commencement Date, Rent shall be payable in equal monthly installments in U.S. funds, plus applicable state sales tax, as required by Applicable Law, on the first (1st) day of each and every month as shown below and without billing, at the offices of the Department as set forth in Article 3.05 (Address for Payments).

(B) Sales Taxes and Other County Charges. Lessee shall pay to the Lessor, in addition to the foregoing Rent, all applicable state sales taxes as well as all federal, state or local taxes arising out of Lessee's use of the Premises, and all other charges, permitted to be Imposed by the County under this Agreement, imposed by the County on the Lessee's use of the Premises provided that such charges are applicable to all similarly-situated tenants at OPF.

(C) Title to Improvements. Unless the Parties have otherwise agreed, title to all Improvements made on or under the Premises by Lessee shall revert to the Lessor on the first (1st) day of the first month of the thirty-fifth (35th) anniversary of the Lease Commencement Date. Lessee shall provide reasonable documentation to Lessor confirming transfer of such title to the Lessor.

3.02 Security Deposit: Prior to occupancy or use of any improvement on the Premises, the Lessee shall pay to the Lessor an amount equal to two (2) times the required total monthly installments of Land Rent, Pavement Rent and Opportunity Rent pursuant to Article 3.01 above, plus applicable state sales tax on such security deposit amount, as security for the payment of the Lessee's obligations hereunder (the "Security Deposit"). The Security Deposit shall be in addition to any Rent payments required hereunder, and the Lessor shall be entitled to apply such security deposit to any debt of the Lessee to the Lessor that may then exist, as permitted by law, including but not limited to, the Rent, and fees and charges permitted to be Imposed by the County hereunder. In lieu of the security deposit being made in cash, the Lessor, in its sole discretion, may authorize the Lessee to provide an Irrevocable Letter of Credit, in a form approved by the Lessor, in like amount. The amount of the security deposit is subject to adjustment by the Lessor at any time there is a change in the Rent pursuant to the terms of this Agreement; provided further, Lessor shall have the right to demand an increase in the security deposit requirement of up to an additional four (4) months of Rent (on the basis of monthly installments) to provide the Lessor with adequate assurance of the Lessee's payment of its obligations, which assurance is

required because of the Lessee's defaults in the timely payment of Rent, and fees and charges permitted to be imposed by the County under this Lease, due hereunder, or because the Lessor has reason to believe, based on published reports, that the Lessee's future ability to pay such Rent, and such fees and charges, on a timely basis, is in jeopardy.

3.03 Rental Rate Review:

(A) Annually as of October 1 of each year during the term of this Agreement, or such other date as may be established by the Board of County Commissioners, the ground rental rates (land and pavement), applicable to the Premises as stated in Article 3 (Rentals and Payments) above shall be subject to review and adjustment in accordance with the adjustment of rental rates for the entire Airport based on fair market value (FMV) rental rates established through appraisal and approved by the BCC.

(B) When such rental rate adjustments are established by the Board of County Commissioners, and new or revised rental rates applicable in whole or in part to the Premises are established, this Agreement shall be deemed to have been administratively amended to incorporate the revised rental rates effective as of such effective date. Such revised rental rates shall be reflected herein by means of a letter between the Department and the Lessee to be attached hereto. Payments for any retroactive rental adjustments shall be due upon billing to the Lessee by the Department and payable by the Lessee within thirty calendar days of same. Notwithstanding anything to the contrary provided herein, the adjustment of rental rates for the Premises shall be based on a non-discriminatory application of the rental rates for the entire Airport as adjusted by the Board of County Commissioners

3.04 Holdover: In the event that the Lessee remains in possession of the Premises beyond the expiration of the Term, or the earlier termination of this Agreement pursuant to the terms hereof, the Parties shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the period beyond expiration of the Term, or the earlier termination of this Agreement. However, during any such possession of the Premises, as a holdover tenant, after the Lessor has demanded the return of the Premises, double the rent otherwise due, shall be payable by Lessee to Lessor, in monthly installments, after such expiration or termination but during any holdover period.

3.05 Address for Payments: The Lessee shall pay, by mail or other delivery services, all Rent, and fees and charges required by this Agreement to the following:

Miami-Dade Aviation Department
Finance Division
P. O. Box 526624
Miami, Florida 33152-6624

Payments may also be made by hand-delivery to the Finance Division offices at 4200 NW 36 Street, 3rd Floor, during normal working hours.

3.06 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) days after same shall become due, interest at the rates established from time to time by the BCC (currently set at 1.5% per month), shall accrue against the delinquent payment(s) from the original due date until the Lessor actually receives payment. The right of the Lessor to require payment of such interest, and the obligation of the Lessee to pay same, shall be in addition to, and not in lieu of, the rights of the Lessor under this Lease to enforce other provisions herein and pursue the Lessor's remedies, including termination of this Agreement in accordance with this Lease, and to pursue other remedies provided by Applicable Law.

3.07 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the Lessor in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee assessed

in accordance with the Department's practice for dishonored checks plus penalties as may be imposed by Applicable Law, such as Sections 832.08 and 125.0105, Florida Statutes, as such statutes may be amended or renumbered. Further, in such event, the Lessor may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Lessor.

3.08 Utilities: The Lessee shall pay for all utilities it uses or are imposed on Lessee as a matter of Applicable Law. The Lessor shall have no obligation to provide utilities to the Premises or, as provided below in Article 6 of this Agreement, to maintain or repair any utilities that may exist on the Premises as of the Lease Commencement Date.

3.09 Other Fees and Charges: The Lessee acknowledges that the BCC has established, or may establish or direct the establishment of, from time to time: (i) various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to, specifically provided to the Lessee hereunder, or related, in any manner, to the exercise of Lessee's rights under this Lease (except fees and charges established pursuant to Articles 2.04, 2.05, 3.10 and 3.11), and (ii) procedures relating to the payment of same. The Lessee shall pay, upon billing, for its use of such facilities, equipment and services, for the use of such facilities, equipment and services, which are billed monthly. For other fees and charges, unrelated to the exercise of Lessee's rights under this Lease, which are based on usage, the Lessee shall, in writing, report its uses of applicable facilities, equipment and services, and simultaneously pay the applicable fees and charges, unrelated to the exercise of Lessee's rights under this Lease, at such frequency, and in such manner, as may be prescribed by the Department. Notwithstanding the absence of any identification in this Agreement of particular charges to be paid by Lessee for its use of the Airport, Lessee agrees to pay whatever charges are imposed by the County on all tenants and users of the Airport for the use of various facilities, equipment and services, unrelated to the exercise of Lessee's rights under this Lease. Notwithstanding the foregoing, for the avoidance of doubt, in no event shall Lessor be entitled to impose any fees or charges on Lessee related, in any manner, to the exercise of Lessee's rights granted under this Lease, except fees and charges established pursuant to Articles 2.04, 2.05, 3.10, 3.11 and fees imposed on Lessee by constituent Departments of the County providing services to Lessee (including but not limited to Solid Waste and/or Water and Sewer), and fees imposed by any Authority Having Jurisdiction in a regulatory capacity.

3.10 Assignment Fee: The Lessee shall be obligated to pay to the Lessor a fee of two percent (2%) of gross consideration received by Lessee in the event that the Lessee transfers, subleases or assigns this Lease within the first five (5) years of the Lease Term following the Lease Commencement Date (the "Transfer Fee"); provided however, such Transfer Fee shall not be assessed on transfers, subleases, or assignments to Affiliates of Embassair Group US, Inc. or the Lessee, or on Lessor's financing parties in the event such party has assumed this Agreement. For the purposes of this Lease, the term "Affiliate" means a business entity in which Embassair Group US, Inc. or the Lessee maintains a majority ownership. Upon the sixth (6th) anniversary of the Lease Commencement Date, Opportunity Rent shall become payable, and the Transfer Fee shall no longer be payable in the event of a transfer, sublease or assignment of this Lease by the Lessee.

3.11 Flowage Fees: Lessee shall be obligated to pay flowage fees, in the amount of \$0.08 per U.S. gallon, for all aviation fuel, lubricants and oils flowage.

ARTICLE 4

Improvements to Premises and Other Improvements

4.01 Improvements to Premises and Other:

(A) As authorized pursuant to Chapter 125.012(24), Florida Statutes, subject to the provisions of this Agreement, the Lessee, for its convenience, shall, design, construct and pay for such improvements (including buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements) to,

or for the benefit of, the Premises, as shall be necessary to make the Premises suitable for Lessee's use and occupancy for the purposes and uses described in Article 2 ("Use of Premises") hereof and generally as shown on Exhibit A herein, including without limitation, (i) the Terminal Facility, to be located on the Premises, and (ii) a new Aircraft taxi lane, to be located outside of the Premises, on the Airport property, as depicted and more fully described on Exhibit A (the "Taxi Lane"). Such improvements shall be collectively referenced herein as the "Improvements." The Parties expressly agree that the design and layout of the Taxi Lane as shown on the attached Exhibit A is not final, and is subject to the review and consent of the Federal Aviation Administration, which has not yet been granted, and the Authorities Having Jurisdiction.

(B) In addition to Lessee's right and obligation to complete construction of the Improvements according to the timetable described in Article 1.06 (Development Schedule and Failure to Develop), Lessee hereby agrees to satisfy the minimum investment requirement, set forth in Article 1.02 (Investment) by virtue of the costs incurred by Lessee in the design and construction of the Improvements. Expenditures that satisfy such minimum investment requirement shall be as further described in Article 4.09 below.

(C) The Lessee shall bear, and be solely responsible for, all costs in relation to the design, construction and use of the Improvements, including, but not limited to, the following:

- (1) land use approvals, development fees, concurrency fees, and permit fees for the design, construction, and subsequent use of the Improvements and infrastructure;
- (2) design and construction of the Improvements, including but not limited to utilities (which may include construction of water, sewer, or storm sewer facilities outside of the Premises if needed to connect the Premises to the County's utility infrastructure), roads, parking lots, landscaping, taxiways, and ramps on the Premises, as well as the Taxi Lane located off the Premises;
- (3) financing, construction bonding and insurance, building permits, impact and concurrency fees, utility installations and/or hook-ups or other infrastructure for the Improvements, as may be required to make the Premises suitable for the use of the Improvements;
- (4) construction audits (as may be required elsewhere herein);
- (5) consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee; and
- (6) all other direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent use.

Except as otherwise set forth herein, Lessee acknowledges that the Lessor shall have no maintenance responsibility for any of the Improvements to be constructed on the Premises by Lessee.

4.02 Design of Improvements:

(A) Prior to the commencement of any construction of the Improvements, Lessor and Lessee shall hold a pre-design meeting to be coordinated through the Lessor's Facilities Project Manager with the participation from all parties deemed by Lessor to be necessary for such meeting, for discussions regarding utilities, grading drainage, airside, security, existing as-built drawings, compliance with the master plan for OPF in effect as of the Effective Date (the "Master Plan"), and any other related item(s). Lessee and Lessor shall reasonably cooperate to obtain FAA approval of the design for the improvements, and the Parties acknowledge that such FAA approval shall be communicated to Lessee in writing prior to the commencement of construction of the Improvements. The Lessee and its architect/engineer (i) have the responsibility

to insure that the design of the Improvements shall be in material compliance with all applicable laws, codes, regulations, and other requirements ("Applicable Laws") of County, State and/or Federal authorities having jurisdiction ("Authorities Having Jurisdiction") over the Improvements by law, including but not limited to the Storm Water Master Plan and all master permits issued by the South Florida Water Management District governing OPF or the Premises, and (ii) shall use commercially reasonable efforts to comply with the contractual requirements of the County as they relate to projects constructed under TAC-N Tenant Airport Construction Contracts, which requirements are set forth in Exhibit B, attached hereto and made a part hereof. Lessee shall be responsible for obtaining and confirming as-built drawings and information pertaining to the design of the Improvements; provided, however, promptly following the Effective Date, the Miami-Dade County Aviation Department shall deliver to Lessee all existing as-built drawings and information, within the Miami-Dade County Aviation Department's possession, pertaining to the Premises, the site of the Taxi Lane and existing utilities and off-Premises utility connections.

(B) Lessee acknowledges that, before the County's Building Department may issue any permit for the Improvements, the Department must issue a "Letter of Concurrence" that constitutes the County's authority for the Lessee to apply for, and obtain, the building permit. The Department shall not be required to issue the Letter of Concurrence until such time as Lessee has complied with all obligations in this Agreement as to the design of the Improvements, including compliance with the Department's TAC-N procedures in effect on the Effective Date, submission of approved Contract Documents, as that term is defined in sub-article (C)(i) below, and compliance with the regulatory provisions of the County's other departments having jurisdiction over the construction, such as, but not limited to, the Fire Department and the Department of Environmental Resources Management.

(C) As described in sub-article (1) below, the Lessee shall submit, to the Facilities Division of the Department, the Contract Documents for each Improvement, for the Department's review, modifications, and approval. In no event shall the Department's review, modification or approval hereunder be unreasonably withheld, conditioned or delayed. The Department's failure to submit modifications within fourteen (14) business days from the date the complete Contract Documents are submitted by the Lessee to the Department shall be deemed as a consent by MDAD for Lessee to apply for permits from the appropriate County Departments; provided, however, that, if the Department has requested changes on such Contract Documents, Lessee shall not proceed with the Improvements, until Lessee has incorporated such changes in the Contract Documents and resubmitted them to the Department for confirmation that the changes in the Contract Documents have been made. The design of the Taxi Lane is expected to be finalized during the design phase of the Improvements; however, in the event that the design of the remainder of the Improvements is completed prior to the design of the Taxi Lane, Lessee shall be entitled to submit the remainder of the Improvements to the Facilities Division of the Department for review and approval, and the Facilities Division of the Department shall defer review and approval of the Taxi Lane until the design thereof has been completed. Further, the Department shall permit the commencement of construction of the Improvements, other than the Taxi Lane, prior to the completion of the design of the Taxi Lane, in the event that the design of the Taxi Lane is not completed, or the approval of the Taxi Lane has not been secured from the Department, by the time that Lessee is ready to commence construction for the remainder of the Improvements.

- (1) The Lessee shall submit to the Department, for design review, ten (10) sets of the following documents: (i) 100% complete construction drawings and specifications ("Plans and Specifications"); (ii) a project schedule based upon calendar days without dates for the design, bid and construction, hereinafter referred to as "Lessee's Project Schedule"; and (iii) cost estimates for the Improvements, prepared by an architect/engineer registered in the State of Florida (collectively, the "Contract Documents") The Department may, from time to time, reasonably request: (i) submission of Plans and Specifications at other stages of completion, and/or (ii) submission of other documents as part of the Contract Documents for a particular Improvement (collectively, "Supplemental Requests"), and Lessee shall comply with such reasonable Supplemental Requests. Lessee acknowledges that failure to comply with Lessee's obligations to initially submit complete Contract Documents (excluding any Supplemental Requests) may delay the Department's review of the Contract Documents,

which may cause the Lessee to miss other design or construction deadlines contained herein or desired by Lessee. Any delay caused by the Department's review, and/or Supplemental Requests, in each case, beyond the fourteen (14)-calendar day review period set forth in sub-article (C)(3) below, shall extend the deadlines contained herein, day for day. Delays resulting from the failure of the Lessee to initially submit all Contract Documents expressly set forth herein shall not extend the deadlines contained herein.

- (2) Upon submission of the Contract Documents to the Department, in addition to design review, the Department shall review the Plans and Specifications for compliance with the following:

(i) Conformance with the Master Plan, the County's Comprehensive Master Development Plan (CDMP), and Airport Layout Plan (ALP), and FAA approval.

(ii) Compliance with environmental requirements, utilities master plan, and storm water master plan and permitting requirements.

- (3) The Department shall comment, in writing, on the Contract Documents within fourteen (14) calendar days following the date of receipt of same from the Lessee. All comments by the Department shall be incorporated into the Contract Documents, unless Lessee requests reconsideration of any of the Department's comments. Such request shall include documentation supporting Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration. The determination of the Department, at such time, shall be final and binding upon the Lessee, and accordingly shall be incorporated in the revised Plans and Specifications for resubmittal. Subject to Lessee's right to make non-material modifications to the layout of the Improvements, after the Department reviews the Plans and Specifications as submitted by the Lessee, the Lessee may not make a material change in the Plans and Specifications, without the Department's further review, which shall not be unreasonably conditioned, withheld or delayed. The Department's review of the Contract Documents does not constitute certification or warranty by the Department: (a) as to the quality of the Contract Documents prepared by the Lessee's architect/engineer(s); (b) that the Contract Documents are free of design errors or omissions; or (c) that the Contract Documents are in compliance with Applicable Laws governing the construction of the Improvements.

(D) The Parties expressly acknowledge that the design and layout of the Taxi Lane is subject to the review and approval of the FAA, and that the FAA has not, as of the date of execution of this Agreement, approved such Taxi Lane. Lessee shall be solely responsible for all costs associated with the design and construction of the Taxi Lane such that is both approved by the FAA and complies with Applicable Law. Lessor shall reasonably cooperate with Lessee to obtain FAA approval of the taxi lane, but shall be under no obligation to materially amend or alter the Airport Layout Plan, or to curtail, modify, or limit the use of any existing aviation facility at OPF in order to secure approval of the Taxi Lane. In the event that Lessee is unable secure approval of the FAA, and elects to terminate this Lease pursuant to Section 1.01, Lessee shall be solely responsible for all costs it has incurred through the date of such termination, including but not limited to construction costs of Improvements it may have elected to commence pursuant to (c) above.

4.03 Submission of Certain Documents and Fees Prior to Commencement of Construction: At least ten (10) days prior to commencing construction, Lessee shall comply with the following requirements:

(A) Lessee shall submit the following to the Department's Facilities Project Manager, who will be assigned to this Agreement:

- (1) A copy of the building permit(s);
- (2) All construction bonds required under Article 4.07 (Construction Bonds and Insurance Required), and insurance certificates, required under Article 4.07; and
- (3) An insurance certificate for the Pollution and Remediation Legal Liability Insurance required under Article 12.

(B) Unless the Lessor directs otherwise, Lessee shall submit the following to the Department's Finance Manager:

- (1) A check made payable to the Department in the amount of one hundred and fifty thousand dollars (\$150,000) together with a copy of the construction contract for the improvements. Such fee shall be non-refundable, unless this Lease is terminated, prior to commencement of construction. Such fee shall be in lieu of all plans processing fees, building permit fees and inspection fees for the improvements; notwithstanding, if the actual, final construction hard costs are higher or lower than \$15,000,000.00, the difference shall be multiplied by 1% and shall either: (i) be paid by Lessee to the Department if the resulting number is a positive amount, or (ii) refunded to the Lessee by the Department if the resulting number is negative; and
- (2) Copy of the Lessee Audit, if applicable, pursuant to Article 8.05.

(C) Lessee shall submit the following to the Department's Assistant Director for Business Retention and Development:

- (1) Copy of Lessee's financing documents pursuant to Article 11.03

(D) Lessee shall not be authorized to begin construction until the above-listed items have been submitted to the Department. If Lessee begins construction prior to submission of the Contract Documents, to the reasonable satisfaction to the Department, and payment of fees in the required form and amounts, as required pursuant to this Article 4.03, the Department shall be authorized to halt Lessee's construction activities without any liability to the County until such time as Lessee satisfies these requirements. In such event, no extensions of time shall be granted by the Department to Lessee. During construction, during reasonable business hours, upon at least forty-eight (48) hours prior written notice, the Department's Project Manager or a designee will be permitted by Lessee to access the Premises in order to observe the progress of the construction.

4.04 Construction of Improvements: Promptly following Lessor's approval of the Contract Documents, in accordance with Article 4.02 (Design of Improvements), but not more than one hundred and eighty (180) days thereafter, the Lessee shall finalize and enter into a contract(s) for the construction of the Improvements, in accordance with the terms and conditions of the approved Contract Documents. The Lessee shall use commercially reasonable efforts to achieve Beneficial Occupancy of the Improvements pursuant to Article 1.06. In no event shall any approval hereunder be unreasonably withheld, conditioned or delayed. -

4.05 Failure to Complete on a Timely Basis: The Lessee shall achieve Beneficial Occupancy of the Improvements in accordance with Article 1.06. In the event the Lessee fails achieve Beneficial Occupancy of the Improvements in accordance with Article 1.06, the County shall give written notice to Lessee of such failure. If Lessee fails to cure such failure with one hundred and twenty (120) days following the date of receipt of such notice, or Lessee fails to commence to cure such failure within such one hundred and twenty (120)-day period, if such failure is of a nature that cannot reasonably be cured within such one hundred and twenty (120)-day period, Lessee shall be in default under this

Agreement, and the County may terminate this agreement by delivering written notice of termination to Lessee, specifying the effective date of termination, which effective date of termination shall be a date no earlier than thirty (30) business days following receipt by Lessee of the County's notice of termination, or else County may take whatever appropriate legal steps may be available hereunder to protect the County's interests.

4.06 Certain Construction Contract Terms: All contracts entered into by the Lessee for the construction of the Improvements shall require that Beneficial Occupancy of the Improvements shall be achieved within a specified time period following the execution of said contract(s) and shall contain, unless otherwise authorized by the Department, reasonable provisions for the payment of actual or liquidated damages in the event Lessee's contractor fails to achieve Beneficial Occupancy in accordance with this Agreement. The Lessee agrees that it will use commercially reasonable efforts under such construction contract(s) to (i) enforce the timely completion of the work covered thereby and (ii) provide that the County is a third party beneficiary thereof.

4.07 Construction Bonds and Insurance Required; Insurance Company Rating:

(A) All contracts for the construction of any Improvements shall require that Lessee shall maintain, or cause to be maintained, the following construction bonding and insurance during the construction of the Improvements:

- (1) Separate performance and payment bonds, reasonably satisfactory to the County, in the full amount of the Improvements, to assure completion of the contractor's obligations under such contract, and the payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and material men. The required bonds shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.
- (2) A contract completion bond from the Lessee to the County as security for the completion of and payment for the construction of the Improvements free and clear of all claims of any nature whatsoever in the full amount of the cost of the contracts for construction of the Improvements. In lieu of a contract completion bond, the County may accept substitute documents that provide the Department with assurance that the improvements will be completed. If Lessee obtains a performance and payment bond that names the Lessee and County as joint obliges, County will accept such bond in satisfaction of the requirement for a contract completion bond, provided such bond is in a form reasonably acceptable to the County.
- (3) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County, as their interests may appear, in amount(s) not less than 100% of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.
- (4) Commercial General Liability Insurance as specified in Article 12 (Insurance) herein.
- (5) Workers Compensation Insurance as required by Florida Statutes.
- (6) Automobile Liability Insurance as specified in Article 12 (Insurance) herein.

(B) All Insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and rated no less than "A-" as to financial strength and no less than Class "VII" as to financial size, in accordance with the A.M. Best Company Insurance Guide, or its equivalent as approved by the County Risk Management Division.

(C) The Lessee shall furnish insurance certificates evidencing the insurance required under this Article 4.07 to the County for approval, as may be required by the MDAD Risk Management, which approval shall not be unreasonably withheld, conditioned or delayed. These certificates shall clearly indicate that the Lessee or its contractors have obtained insurance of the types, amounts and classifications required by these provisions. No cancellation of the insurance shall be effective without a thirty (30) day (or ten (10)- day in the case of non-payment of premium) prior written notice to MDAD Risk Management.

4.08 Construction Completion Documents: Within thirty (30) days following the completion of construction of any Improvement for which a Certificate or Temporary Certificate of Occupancy is issued or such reasonable period of time as may be necessary, the Lessee shall furnish the following documents to the Department:

(A) Documents showing that the Improvements have met the requirements of the final inspection and that all permits have been closed out;

(B) Documents that Lessee has obtained lien waivers from the general contractor and all parties designated by the Department, along with any final affidavit of the general contractor required by Chapter 713, Florida Statutes;

(C) Copy of Certificate of Occupancy for the Improvements;

(D) Certification from the Lessee's architect that the Improvements have been completed in substantial conformance with the approved Plans and Specifications as well as all permits and applicable governmental requirements;

(E) At least one (1) copy of an as-built survey of the Premises;

(F) Two (2) complete sets of as-built construction drawings and two (2) AutoCAD files of the as-built construction drawings in a compact disk format or other format designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require; and

(G) Copies of all releases of contractor claims and liens.

4.09 Final and Approved Improvements Costs:

(A) For purposes of verifying Lessee's expenditure of not less than \$21,250,000.00 in design and construction costs for the Improvements on the Premises, within ninety (90) days following the date on which Beneficial Occupancy has been achieved, the Lessee shall submit to the Finance Division of the Department, a certified audit of the monies actually expended in the design and construction of the Improvements, including all infrastructure and utility facilities, in accordance with the Contract Documents described above in Article 4.02 (A), prepared by an independent certified public accounting firm ("Auditor") approved in advance by the Department, which approval shall not be unreasonably withheld, conditioned or delayed. In accordance with Article 4.01(B) and Article 4.09(B), eligible costs for such Improvements shall include, but not be limited to, those costs for project management and scheduling, all permitting and design fees and costs paid by the Lessee, and construction costs (including contractors' overhead (general conditions and general requirements costs) and profit, in accordance with the Contract Documents and any changes thereto requested by the Lessee and approved by the Department, including the costs of required bonds and insurance, as further elaborated in Article 4.09(A), and all other costs identified in Article 4.01(C) and Article 4.09(B) ("Approved Improvements Costs"). The Department's failure to disapprove the audit submitted by Lessee as required in this Article 4.09, within ninety (90) days from the date of submission, shall constitute an unconditional approval. In the event of any disputes between the Department and the Lessee as to whether certain costs are to be included in Approved Improvements Costs, said dispute(s) shall be submitted to the consulting engineers identified in the County's Trust Agreement, as defined in Article 19.01 (Incorporation of Trust Agreement by Reference) hereof (the "Consulting Engineers").

(B) Approved Improvements Costs shall costs, subject to verification under the certified audit described in Article 4.09(A), shall include actual expenditures for architectural and engineering design, construction, site development, required bonds, construction and liability insurance, construction financing fees and interest, building permits, impact and concurrency fees, the certified audit, consultant fees, accountant fees, permanent financing fees or charges, reasonable attorneys' fees and costs, furniture, fixtures and equipment. In the event of any questions as to whether certain costs are to be included in the Approved Improvements Costs, the County through its Consulting Engineers shall make a determination, subject to Lessee's right to appeal or contest such decision.

4.10 Temporary Structures: Trailers or temporary structures used for construction purposes, but not for business purposes, shall be allowed on the Premises during the period of construction of the improvements, subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed promptly following Beneficial Occupancy of the Improvements. Copies of the building permits shall be submitted to the Department's Facilities Project Manager within thirty (30) calendar days following the issuance of same to Lessee.

4.11 Review of Construction: During the construction of the Improvements, the Department or its designee shall have the right, but not the obligation, to periodically review the construction and to enter the Premises at reasonable times during normal business hours, upon at least forty-eight (48) hours prior written notice (but not to exceed one (1) such inspection in any six (6) month period), to inspect the construction for the purpose of ensuring conformity with the building permits for the Improvements, including any amendments thereto with respect to modifications to the Improvements made in accordance with Article 1.03. The failure of the Department to make such review or inspection shall not impose any liability on the Department or the County, nor constitute Lessor's acceptance of the Improvement as being in accordance with the building permits therefor and Lessee's obligations hereunder.

4.12 Tenant Airport Construction Contracts: From time to time, during the Term, the Lessee and the County through its County Mayor shall be entitled to enter into separate tenant airport construction, reimbursable ("TAC-R") or non-reimbursable contracts ("TAC-N") (together, "Tenant Airport Construction Contracts") at the Airport (other than the Premises), or on the Premises, for the purpose of enabling Lessee to construct the Improvements, as may be deemed necessary or appropriate, in the reasonable judgment of the County, for Lessee's construction and use of its Improvements on the Premises. Such contracts shall comply with the Department's TAC-R or TAC-N contract requirements; as such requirements may be amended by the Department from time to time.

4.13 Assignment of Contract Documents to Lessor and Assumption of Construction of Improvements by County: In the event that Lessee fails to perform its material obligations under Article 4 of this Agreement, unless such failure is due to a Force Majeure event, or the terms of this Agreement provide otherwise, the Lessor may provide Lessee written notice of such breach specifying those matters constituting such breach. Material obligations shall include, but not be limited to, material compliance with the Contract Documents and material compliance with all Applicable Laws. If such breach continues for a period of thirty (30) days following the date of Lessee's receipt of such notice, or Lessee fails to diligently commence to cure such breach within such thirty (30)-day period, if such breach is of a nature that it cannot reasonably be cured within such thirty (30)-day period, Lessee shall be in default, and Lessor may terminate this Agreement by delivering written notice of termination to Lessee, specifying the effective date of termination, which effective date of termination shall be a date no earlier than thirty (30) business days following receipt by Lessee of Lessor's notice of termination.

4.14 Standards of Construction: The Lessee may construct all Improvements to the standards established by the Lessor, as of the Effective Date, or shall be entitled to use modified standards for its design and construction of Improvements that are to remain in Lessee's name. Such standards are set forth in Exhibit C.

4.15 Compliance with Responsible Wages and Benefits for County Construction Contracts (Implementing Order #3-24): Lessee is aware of the policy of Miami-Dade County that in all leases of County-owned land which provide for privately-funded construction Improvements thereon, the tenant shall include the requirements of the Responsible

Wages Ordinance codified as Section 2-11.16 of the Miami-Dade County Code, as well as Implementing Order #3-24 in all applicable construction contracts. Lessee agrees to comply with all applicable provisions of such ordinance and implementing order.

4.16 Other Programs: To the extent required by the current terms of the County's Community Business Enterprise (CBE) Program, as of the Effective Date, applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code, the Community Small Business Enterprise (CSBE) Program for construction activities under Section 10-33.02, the Residents First Training and Employment Ordinance under 2-11.17 of the Miami-Dade County Code, the Living Wage Ordinance under Section 2-8.9, the ordinance referred to as the "Little Davis-Bacon Ordinance" under Section 2-11.16, and any other program of the County made applicable to the Lessee's activities hereunder, Lessee agrees to materially comply with such applicable provisions as well as any implementing orders of the County, and other official directives issued by the County, relating to such Programs. This Project is subject to the Art in Public Places ("APP") provisions in Section 2.11.15 of the Miami-Dade County Code and Administrative Order 3-11, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Developer shall transmit 1.5% of the Project costs for all development on County land (as outlined in the Procedures Manual) to the Department of Cultural Affairs for the implementation of the APP program. The Developer is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP program pursuant to the requirements of said program.

ARTICLE 5

Maintenance and Repair by Lessee

5.01 Cleaning: The Lessee shall, at its sole cost and expense, perform, or cause to be performed, services which will at all times keep the Premises clean, neat, orderly, sanitary and presentable, following the date of Beneficial Occupancy of the Improvements. Prior to the date of Beneficial Occupancy of the Improvements, the Premises, from time to time, will be an active construction site, on which trash, debris, scrap, materials and equipment can be reasonably expected to accumulate; provided however, during such period, Lessee shall not permit any unreasonable accumulation of such trash, debris, scrap, materials or equipment to exist at any time, and shall endeavor to maintain the construction site in a clean, neat, orderly and sanitary condition, with due consideration given to the nature of on-going construction activities. Notwithstanding, Lessee shall use best efforts to ensure that debris from such construction does not pose a hazard to aviation or otherwise pose a risk to aircraft operations, and shall take all actions necessary to prevent or resolve such hazards or risks.

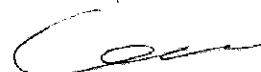
5.02 Removal of Trash: The Lessee shall, at its sole cost and expense, remove or cause to be removed from the Premises, all trash and refuse which might unreasonably accumulate and arise from its use of the Premises and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner reasonably approved by the Lessor. Notwithstanding, Lessee shall use best efforts to ensure that trash and refuse does not pose a hazard to aviation or otherwise pose a risk to aircraft operations, and shall take all actions necessary to prevent or resolve such hazards or risks.

5.03 Maintenance and Repairs:

(A) Lessee shall be exclusively responsible for maintenance and repair of the Improvements (including unpaved and landscaped areas and whether or not Temporary Certificates of Occupancy or Certificates of Completion have been issued for any Improvement thereon), except for those off-Premises items for which the Lessor is responsible under Article 6 (Maintenance by Lessor). The standard of maintenance and repairs by Lessee shall be in quality and class equal to, or better than, the standard of maintenance and repair of the public Airport facilities undertaken by the County or its contractors. The Lessee shall repair all damage upon the Premises, caused by the Lessee and its employees, agents, independent contractors, patrons, servants, trespassers, or invitees.

(B) Except as provided in Article 6.01 or as otherwise provided herein, in no event shall Lessor be responsible or liable for any maintenance or repair of any Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the Premises.

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12.10.12



(C) Any maintenance or repair obligation of Lessee pursuant to this Article 5 shall be subject to interruption caused by an event of Force Majeure. Upon the occurrence of any event of Force Majeure, the Lessor shall have no claim for breach or damages for the Lessee's failure to furnish, or to furnish in a timely manner, any such maintenance or repair.

5.04 Excavation of Land: Except in connection with the construction of the approved Improvements, no excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required for environmental monitoring purposes, without the prior written approval by the Lessor. Lessor's approval of the Contract Documents pursuant to Article 4 (Improvements) shall constitute permission for the excavation required for construction.

5.05 Water and Sewerage System: The Lessee shall operate and maintain, at its sole cost and expense, all the components of the existing water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises. The Lessee shall not make any alterations or modifications to these facilities without the advance written approval of the Lessor, which consent shall not be unreasonably conditioned, withheld, or delayed. The Miami-Dade County Water and Sewer Department, or its successor, shall operate and maintain, at its sole cost and expense, all the components of the existing water, sanitary sewerage and storm drainage facilities within the Airport, outside of the boundaries of the Premises, which are necessary to serve the Premises.

5.06 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes resulting from Lessee's operations on the Premises, and, shall comply in all material respects with Applicable Laws in separating, neutralizing and treating industrial wastes and foreign materials and the proper disposal thereof, in accordance with Applicable Laws.

5.07 Grassed Areas and Shrubbery: The Lessee shall mow the grassed areas and trim the shrubbery on the Premises regularly so as to maintain the Premises in a neat, orderly and attractive condition, subject to Article 5.01. Any land areas not grassed or paved shall be stabilized by the Lessee and the Premises shall be so utilized, that use of the same will not cause excessive dust, debris or waste to be blown about or raised so as to be ingested by Aircraft or otherwise unreasonably interfere with or disturb the use or enjoyment of others of the Airport. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards applicable to all similar tenants of the Airport, as published, from time to time, by the Lessor and provided in writing to Lessee.

5.08 Inspections: Upon and during the continuation of any material breach by Lessee, Lessor and/or its designated representatives shall have the right, during normal working hours, upon at least forty-eight (48) hours prior written notice to Lessee, to inspect the Premises to identify those items of maintenance, repair, replacement, modification and refurbishment required of Lessee to correct the condition giving rise to such breach. Lessee shall perform all corrective work required of it, identified in such inspection(s) within thirty (30) days following the date of receipt of written notice from the Department, subject to Lessee's right to dispute same in a court of competent jurisdiction; provided, however, if such corrective work cannot be reasonably accomplished within such (30)-day period, then the Lessee shall commence the corrective work within such thirty (30)-days period, and diligently prosecute the same to completion. Trash and debris accumulation in violation of this Agreement shall be corrected within forty-eight (48) hours following receipt of written notice by the Lessee from the Lessor. Failure of the Lessor to inspect, as aforementioned, shall not impose any liability on the Lessor.

5.09 Failure to Maintain: If it is determined by the Lessor that the Lessee has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises as required by this Article 5 (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed, the Lessor shall provide prior written notice to Lessee of its intention to cure such deficiencies. If Lessee has failed to cure any such deficiency within thirty (30) days following the date of receipt of such notice (provided, however that if such cure cannot be reasonably accomplished within such thirty (30)-day period, then the Lessee shall commence the cure within

such thirty (30)-day period and diligently prosecute the same completion), the Lessor may enter upon the Premises to cure such deficiency, which, in the judgment of the Lessor, may be necessary, and Lessee shall pay to Lessor the cost of such work, plus five percent (5%) for administrative costs, on the first (1st) day of the month following the date of the completion of such cure and submission to Lessee of the receipts for same.

5.10 Intentionally Omitted.

ARTICLE 6

Maintenance by Lessor

6.01 Lessor's Obligation for Other Maintenance: Except as set forth herein, Lessor shall have no obligation for maintenance or repair of any facility, building, improvement, or ground areas within the Premises.

6.02 Maintenance of Airport Facilities: Throughout the Term, the County shall maintain the Airport, including without limitation, the Off-Premises improvements contemplated in Article 4.01, so that Lessee may make use of the Airport, including the Off-Premises Improvements, for the purposes stated in Article 2, subject to Article 6.04.

6.03 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by an event of Force Majeure. Upon the occurrence of any event of Force Majeure, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department shall provide a Rent abatement for that portion of the Premises rendered effectively unusable for the period of time during which the County is unable to perform the maintenance or repair required by Article 6.01 (Maintenance by County).

ARTICLE 7

Regulations, Licenses and Permits

7.01 Rules and Regulations - General:

(A) Rules and Regulations. The Lessee shall comply in all material respects with: (i) all Applicable Laws, and (ii) any and all plans and programs developed in compliance therewith, to the extent applicable or required, as all of the foregoing may be promulgated and amended from time to time, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws

(B) Permits and Licenses. The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the Term, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee on the Premises or in connection with construction of the Improvements, including ensuring that all legal requirements, permits and licenses necessary for, or resulting directly from, the Lessee's operations and activities on the Premises, have been satisfied, and Lessee is in full compliance with same, to the extent required. Such permits and licenses shall include, but not be limited to, a Certificate of Use and any required Industrial Waste Operating Permits from the Miami-Dade County Department of Environmental Resources Management ("DERM"). Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use, and, as applicable, the appropriate Industrial Waste Operating Permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any applicable permits and licenses, and applications therefore, which the Department may request.

The Department shall give its full cooperation to Lessee necessary to obtain and/or hasten the obtaining of any required permit or license.

(C) Penalties, Assessments and Fines. The Lessee agrees to pay on behalf of the Lessor any penalty, assessment or fine issued against the Lessor, or to defend, in the name of the Lessor, any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation, that the Lessee, its agents, employees or invitees have violated any Applicable Law described in, and subject to the provisions of, this Article 7.01 (Rules and Regulations) above, or is not in compliance, to the extent required, with any plan or program developed in compliance therewith, with such violation or non-compliance occurring on, or in connection with, the Premises. The Lessee agrees to pay, on behalf of the Lessor, any penalty, assessment or fine issued against the Lessor, to the extent that Lessee has been determined to have committed such violation or non-compliance by a court of competent jurisdiction, pursuant to a final non-appealable order of such court. The Lessee further agrees that the substance of this Article 7.01 shall be included in every sublease, contract and other agreement, which the Lessee may enter, related to its operations and activities under this Agreement, and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third-party beneficiary of this provision." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

ARTICLE 8 Environmental Compliance

8.01 Definitions: For purposes of this Agreement, the following additional definitions apply:

(A) "Baseline Environmental Conditions" means the presence or release of Hazardous Materials, at, on, under, or from the Premises prior to Lessee's Occupancy Date, the presence or release of which was not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers. Solely for purposes of this Agreement, it shall be presumed that the Baseline Environmental Conditions consist of the conditions identified in any existing (as of the date of this Agreement) Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, the Baseline Audit or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Occupancy Date that comes to be located on the Premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers.

(B) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at the Airport or against or with respect to its operations at the Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made in writing by any person against Lessee with respect to its operations at the Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.

(C) "Environmental Law" means any applicable federal, state or local law, statute, ordinance, code, rule, or regulation, or license, authorization, decision, order, injunction, or decree, any of which may be issued by a judicial or regulatory body of competent jurisdiction, or rule of common law including, without limitation, actions in nuisance or trespass, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6801 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 8601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*;

the Clean Air Act 42 U.S.C. § 7401 *et seq.*; the Toxic Materials Control Act 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of Miami-Dade County Code, and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(D) "Environmental Requirement" means any Environmental Law, or any agreement or restriction entered into or applicable by law (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

(E) "Hazardous Material" means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a hazardous substance, a hazardous waste or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any applicable Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises, any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises or Other Airport Property.

(F) "Initial Construction Period" means for any lease which contemplates construction or renovation for Premises not previously occupied in whole or in part by Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed nine (9) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations or commences such renovation.

(G) "Occupancy Date" means the date Lessee first entered, occupied or took possession of the Premises under any written or verbal agreement.

(H) "On" or "in" when used with respect to the Premises or any premises adjacent to the Premises, means "on, in, under, above or about."

(I) "Other Airport Property" means property on the Airport occupied or used by Lessee, or upon which Lessee performs operations, but which is not subject to a lease, sublease or other legal agreement governing the terms of Lessee's occupation, use or operations at such property.

(J) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.

(K) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(L) "Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened or actual release of Hazardous Materials, and the delivery of a corresponding no further action confirmation upon which the Lessor and the Lessee can rely.

(M) "Trespassers" means a third party who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises after the Lease Commencement Date. Notwithstanding the foregoing, for purposes of this Agreement, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.

8.02 Lessee's Acceptance of the Risks and Condition of Premises As-Is: Lessee agrees that the Premises shall be leased and delivered to Lessee in its current "as-is/with all faults" condition (but it is not intended by this provision that County be relieved from its duties expressly set forth in this Agreement or any other applicable agreement). Lessee hereby, warrants, covenants, agrees, and acknowledges that:

(A) Hazardous Materials may be present on the Premises and Other Airport Property. The County is currently engaged in a significant environmental remediation program at its airports.

(B) Under Article 8.05 below, Lessee is provided the opportunity to conduct an Independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Lessee's report on the investigation shall be prepared and provided to the County. Whether Lessee conducts such an investigation or not, and subject to Lessor's obligations under this Article 8, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the Premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.

(C) Because of the possible presence of environmental contaminants on the Premises or other Airport property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other Airport Property, or any Improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of Hazardous Materials in, on, under, or about the Premises or other Airport property), for Lessee's proposed or intended use, and Lessee shall rely solely on Lessee's own inspection and examination of such matters.

(D) Except as to County's obligations set forth in this Article or elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's Remediation obligations provided in this Article 8, or any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors and except with respect to Baseline Environmental Conditions, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. Notwithstanding the foregoing, in no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable under this Article 8) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

8.03 Responsibilities for Hazardous Materials:

(A) Unless the Parties agree otherwise in writing, the County shall conduct response actions mandated by existing Environmental Requirements applicable to the County for (i) Hazardous Materials disclosed in the Lessee Audit to the extent required by Article 8.05 and (ii) Baseline Environmental Conditions, provided however that:

- (1) To the extent this Agreement covers Premises not previously occupied by Lessee and if this Agreement contemplates construction or renovation by the Lessee, any Hazardous Material discovered during the Initial Construction Period as defined in Article 8.01(F), shall be presumed to be a Baseline Environmental Condition under this Agreement except to the extent the Department demonstrates to the satisfaction of Lessee by written notice setting forth the Department's explanation as to why the Hazardous Material originated from a

discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision of Article 8.15. Until such time as the Parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with the Department.

(B) Intentionally omitted.

(C) County's responsibility for Remediation under this Article 8.03 shall be limited to the Recognized Environmental Conditions required to be remediated under applicable Environmental Requirements. If County is permitted to leave any Hazardous Material in place under applicable Environmental Requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises. The County shall notify Lessee of any such decision to leave Hazardous Material in place.

- (D)
- (1) To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports, remedial action plans and other documents regarding any soil and groundwater contamination at the Premises. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such reports to the extent they exist. Lessee agrees that during the Term, during reasonable business hours, upon not less than forty-eight (48) hours prior written notice, Department's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems, provided that such access shall not unreasonably interfere with the construction of the Improvements, or Lessee's operations on the Premises. Without limiting the generality of the foregoing, and provided such actions do not unreasonably interfere with the construction of the Improvements, or Lessee's operations on the Premises the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Department or other governmental authorities may require or recommend, utilizing such methods as the Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports.
- (2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by any Remediation it undertakes and shall provide Lessee prior written notice of such Remediation. Lessee agrees that it shall not unreasonably interfere with or obstruct such Remediation. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other Party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remediation to be performed, the Lessee will effect such relocation at no expense to the County. Attached to Tab A (Leased Space Exhibits) is a site sketch of the Premises describing any existing or currently planned Remediation equipment and depicting the current and proposed future location of such equipment.
- (3) If Remediation equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided, however, that

Lessee shall bear no liability and otherwise shall have no responsibility for any theft of and/or damage to such equipment or materials so stored, to the extent Lessee took reasonable measures to prevent, such theft and/or damage and such theft and/or damage was not caused by Lessee or Lessee's employees. To the extent that water and electrical service within the Premises are not metered and the Lessee does not pay for such services directly, the Lessee will provide the County with water and electrical service from the Premises in connection with the Remediation, without charge. The Lessee acknowledges the Remediation may be conducted at the Premises, subject to the requirements of this Article 8.03, at any time during the Term and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

8.04 Baseline Audit: Within thirty (30) days following the Effective Date, the County shall provide Lessee with a copy of an environmental audit of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include analyses of soil and groundwater samples (the "Baseline Audit"). The County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-05, or most recent version, disclosed by the Baseline Audit. Lessee may terminate this Agreement within one hundred and eighty (180) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable.

8.05 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within ninety (90) days from the receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of Lessee's receipt of the Lessee Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions not identified in the Baseline Audit, any previous audits, or any contamination assessment reports or remedial action plans, to the extent any such documents exist. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of any subsurface conditions described in the Lessee Audit. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the Term, then, the County, at its option, shall: (i) allow Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of such notice or dispute from the County; or (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any contamination assessment reports, remedial action plans and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of (1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit, except as to its right to cancel the lease under Article 1.01(B) and, (2) as provided in Article 8.03, any claim it may have against the County with respect either to Recognized Environmental Conditions and subsurface contamination disclosed in such Lessee Audit.

8.06 Environmental Maintenance of Premises: Except for the obligations of the County under this Article 8, Lessee shall, at its sole cost and expense, keep, maintain and use the Premises, and operate within the Premises at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.

8.07 Lessee's Use of Hazardous Materials: Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises or Other Airport Property without first providing the County thirty (30) days written notice prior to bringing such Hazardous Material upon the Premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the Premises. Notwithstanding the foregoing,

County may object to the use of any previously-approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises of Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the Premises. This Article 8.07 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Lessee but which are otherwise transported by Lessee solely in the course of Lessee's business, such as cargo operations, and for which Lessee has no knowledge as to the identity of such hazardous materials prior to such transport. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

8.08 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in Article 8.08(B), MDAD shall have the right, at its own expense, during reasonable business hours, and upon reasonable prior written notice at least forty-eight (48) hours prior to such entry, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with applicable Environmental Law; (2) conducting an environmental review or investigation of the Premises; (3) determining whether Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its reasonable efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than forty-eight (48) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Article 8.08.

8.09 Permits and Licenses: The Lessee warrants that it will secure at the times required by issuing authorities all applicable permits or approvals that are required by any governmental authority having lawful jurisdiction to enable Lessee to perform its obligations under this Agreement. Upon written request, Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Lessee under applicable Environmental Requirements, as they pertain to the Lessee's operations on or use of the Premises or Other Airport Property.

8.10 Notice of Discharge to County:

(A) In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or clean-up of any Hazardous Material on the Premises or Other Airport Property in connection with Lessee's operation thereon; or (ii) any written Environmental Claim affecting Lessee from any person or entity resulting from Lessee's use of the Premises or Other Airport Property, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within five (5) business days of said notice. If County is reasonably satisfied that Lessee is not promptly commencing the response to either of such events, County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Lessee upon demand, except to the extent they relate to a Baseline Environmental Condition.

(B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Regulatory and Economic Resources, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

(C) Within sixty (60) days of execution of this Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

8.11 Reports to County: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises, (or on or in other Airport property for purposes related to Lessee's operations on the Premises), Lessee shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year for the preceding calendar year.

8.12 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned,

such Environmental Audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits" or other recognized format approved by County. If the Environmental Audit indicates any unresolved violation of any applicable Environmental Law and/or Environmental Requirements, Lessee shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) days of the County's request.

8.13 Remediation of Hazardous Material Releases: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the Term ("Hazardous Material Release"), Lessee shall promptly take all actions, at its sole expense and without abatement of Rent, as are reasonable and necessary to return the affected portion of the Premises or Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, it is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to Baseline Environmental Conditions or any other obligations of Lessor pursuant to this Article 8.

8.14 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or to the extent Lessee has not taken reasonable steps to exclude Trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees; (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fees or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided,

however, claims for which Lessee may be liable pursuant to this Article 8.14 shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the Term as additional Rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this section 8.15 does not apply to Baseline Environmental Conditions or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

(A) This indemnity specifically includes the direct obligation of Lessee to perform, at its sole cost and expense, any remedial or other activities required or ordered by court or agency having competent jurisdiction over the subject matter, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of Hazardous Materials.

(B) Lessee agrees in order to minimize its obligations in this regard to use reasonable efforts to assist the Department in responding to Hazardous Materials spills in or Airport property reasonably close to the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this Article 8.14(B) for which it is later determined that Lessee is not responsible, the Department shall reimburse Lessee for all costs associated with or arising out of Lessee's performance of such remedial work. Lessee shall cooperate with the Department in any subsequent effort by the Department to recover from the responsible parties all costs involved with the remediation effort that utilized Lessee's equipment and personnel. Lessee shall perform all such work in its own name in accordance with applicable laws. Lessee acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Lessee in accordance with the law.

(C) In the event Lessee fails to perform its obligations in Article 8.14(A) above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 8.13(A) above, and thereafter seek reimbursement for the costs thereof. In accordance with this Article 8, Lessee shall permit County or its designated representative access to the Premises areas to perform such remedial activities.

(D) Whenever County has incurred costs described in this Article 8 as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1.5% percent per month on the outstanding balance commencing on the thirty-first day following Lessee's receipt of such notice until the date of payment.

(E) To the extent of Lessee's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article 8, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premise. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the Indemnity provision set forth in this Article 8, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

8.15 Dispute Resolution: County and Lessee agree that any dispute between them relating to this Article 8 will first be submitted, by written notice, to a designated representative of both County and Lessee who will meet at County's

place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any agreed decision of the representatives will be final and binding on the Parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either Party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

8.16 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any of its heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, including, without limitation, any Hazardous Material, in, at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this Article 8.16 shall not constitute a waiver or release of any obligation of County under this Article 8. Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

8.17 No Waiver of Rights, Causes of Actions or Defenses. Notwithstanding any language in this Agreement, including without limitation Articles 8.02, 8.03, 8.04, 8.05, 8.13, 8.14 and 8.15, Lessee does not agree to waive or release any rights, causes of action or defenses it may have against Miami-Dade County or any other party related to allegations made by the County in (i) Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit, and (ii) a letter dated April 9, 2001, to Lessee and others (who are referred to as "responsible parties" or "RPs"). Nothing herein shall be construed to limit or expand upon any releases previously granted to or exchanged between the Parties as a result of judgments or settlements obtained in proceedings between the Parties, including, without limitation, settlements in bankruptcy or settlements entered under Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit.

8.18 Surrender of Premises: Lessee shall surrender the Premises used by Lessee to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Lessee is responsible during the Term. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Lessee shall not be responsible under this section 8.18 to the extent of County's obligations under this Article 8.

8.18 Breach: Any breach by Lessee of any material provision of this Article 8 shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

8.20 Survivability of Terms: the terms and conditions of this Article 8, including the indemnity, waiver, and release, shall survive the termination of this Agreement.

8.22 Right to Regulate: As provided for in Article 20 of this Agreement, nothing within this Article 8 shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

ARTICLE 9
Alteration of Premises and Erection of Signs

9.01 Alterations: Except as set forth in this Agreement with respect to the Premises, the Lessee shall not materially alter the Premises or Improvements in any manner without the prior written approval of the Department. In the event Lessee is given approval to make any alterations to the Premises, Lessee shall comply with the terms and conditions of the approval document from the Department and in accordance with Articles 4.12 (Tenant Airport Construction Contracts) and 7 (Regulations, Licenses and Permits). Lessee's failure to do so shall constitute a default under this Lease, provided that Lessor has notified Lessee of same in writing, stating the terms and conditions with which Lessee is not in compliance, and Lessee has not cured such failure within thirty (30) days following receipt of such notice, or, Lessee has not commenced to cure such failure with such thirty (30)-day period, in the event that such failure cannot reasonably be expected to be cured within such thirty (30)-day period.

9.02 Removal of Alterations: Any alterations pursuant to Article 9.01 (Alterations) above constructed or installed by the Lessee, at its sole expense, including signage and telecommunications equipment, that can be removed from the Premises and improvements without materially damaging the Premises and Improvements shall be considered the personal property of the Lessee and may be removed and or replaced by the Lessee at any time during the Term. All other Improvements shall become a part of the Premises, and shall become the property of the County upon expiration of the Term, or as earlier designated by Lessee as provided in Article 1.01, or the earlier termination of this Agreement; provided, however, in the case of any Improvements which were constructed, installed, added or altered with proceeds of tax-exempt financing, such Improvements shall immediately vest in the County or the entity providing such financing, if the financing documents so provide, and shall be deemed to be the property of the County or such entity upon their construction, installation or other implementation, subject, however, to all of Lessee's rights under this Agreement. Lessee hereby reserves the right to remove any item of a non-leased nature, including, but not limited to, personal property, at any time during the Term and upon termination of the Agreement.

9.03 Signage: The Lessee shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind which is visible to the public, without prior written approval of the Department. In the event the Department changes the graphics system for the identification of lessees at the Airport, the Lessee agrees, if required by the Department, to change, at its sole cost, any of its identification signs necessary to comply with such graphics system, provided that such graphics system does not impair the exercise of Lessee's rights to engage in the Permitted Uses..

ARTICLE 10
Indemnification

The Lessee shall indemnify and hold harmless the Lessor and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense at the trial and appellate levels, which the Lessor or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of, and under, this Agreement by the Lessee or its employees, agents, servants, partners, principals, subcontractors, or invitees, to the extent of Lessee's negligence, or the negligence of its officers, employees, agents and instrumentalities. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Lessor, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees and costs at the trial and appellate levels, which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Lessor or its officers, employees, agents and instrumentalities as herein provided. The Lessor shall give to the Lessee reasonable notice of any such claims or actions.

The provisions of this Article 10 shall survive the expiration or early termination of this Agreement for a period of five (5) years following the Lease Commencement Date.

ARTICLE 11
Assignment and Subletting and Conditions of Financing

11.01 Assignment and Transfer: Except as provided in Article 11.03, the Lessee shall not, in any manner, assign, transfer, mortgage, pledge, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights granted to the Lessee herein, without the written approval of the Department. The Lessee may make a collateral assignment to Lessee's lender (a "Lender") or sell the stock of the business without prior approval of the County, and a Lender, who is the holder of a Leasehold Mortgage (as defined below), may foreclose or accept a deed-in-lieu of foreclosure under the Leasehold Mortgage, without prior approval of the County. Lessee may also sell substantially all of its assets without prior approval of the County, provided that: (a) substantially all of the assets are sold; (b) the purchaser is a single entity that will continue substantially all of the operations permitted or required of Lessee hereunder; and (c) the purchaser meets the County's requirements set forth in Article 11.03(D) (5) herein. In the event that a Lender, following a foreclosure or deed-in-lieu of foreclosure of the Leasehold Mortgage (as defined below), seeks provisions in the assignment which (x) extend beyond the requirements of this Article 11 and (y) affect the interests or require certain actions by the County, such provisions must be approved by the County; however, approval of such provisions shall not be unreasonably withheld or delayed by MDAD for so long as the Use of Premises as provided for in Article 2 (Use of Premises) remains substantially the same and this Lease is assigned or transferred to an entity deemed by MDAD to be reputable and creditworthy meeting the County requirements stated under Article 11.03 (D) (5) (Transfer To A "Transferee" or "Successor Lessee").

11.02 Subletting: The Lessee shall submit any subleases to the Department for approval, which shall not be unreasonably withheld. Any objection by the Department must be forwarded to the Lessee within thirty (30) days following the date of receipt of the sublease by the Department's Assistant Director for Business Management. Agreements between the Lessee and the owners or operators of Aircraft who have tie down or hangar agreements that include office or shop space within the Terminal Facility where the tie down or hangar operation is located shall not be considered subleases for the purposes of this Article. Subleases shall be subject to the provisions of any applicable County Commission Resolution, as amended from time to time, which may describe conditions applicable to subleases or limit the Rent to be charged to the sublessee by the Lessee. The County shall have the right to audit the Lessee's compliance with such subleasing policy.

Further, any such subleases shall be subject to the same conditions, obligations and terms as set forth herein, including, as a minimum, but not limited to, requirements for compliance with duly adopted Airport rules and regulations and Applicable Laws regarding payment of concession fees and Indemnification of the County. Notwithstanding anything herein contained to the contrary, in the event that a sublease is approved by the County, the Lessee shall remain fully liable to the County for fulfilling all obligations, conditions and terms of this Agreement, throughout its entire Term.

11.03 Conditions of Financing for Approved Improvements Costs.

(A) Financing of Improvements. Lessee may secure financing from an Institutional Lender to provide funds required for the construction of the Improvements. No mortgage or other encumbrance the Lessee executes in connection with that financing (a "Leasehold Mortgage") will extend to or be a lien or encumbrance upon Lessor's interest in the real property comprising the Premises or in any right appurtenant to that interest. Moreover, the Lessor has no obligation to subordinate the Lessor's interest in the Premises to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this Article 11.03 (A). As used herein, "Institutional Lender" means: (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assists in the financing, development, operation and maintenance of projects; (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth

thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States (if such qualification is necessary in connection with the acquisition of leasehold mortgage debt), (C) pension fund, foundation or university or college or other endowment fund or (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm; (iii) any "qualified institutional buyer" under Rule 144(A) under the Securities Act or any other similar Applicable Law hereinafter enacted that defines a similar category of investors by substantially similar terms; (iv) a governmental authority acting (directly or through a trust or other single purpose vehicle controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by Applicable Law for the benefit of the Lessee; (v) any entity formed for the purpose of securitizing mortgages or making loans in connection with the securitization of mortgages; or (vi) any other financial institution or entity designated by the Lessee and approved by the County; provided, however, each such entity or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$250,000,000.

(B) Rights of Leasehold Mortgagee. The mortgagee or secured party in whose favour Lessee has executed a leasehold mortgage (the "Leasehold Mortgagee") shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Lessee has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with the provisions of this Article 11.03.

(C) Recording of Leasehold Mortgage. Following the Lessee's execution of a Leasehold Mortgage, if applicable, Lessee shall furnish the Lessor (i) a duplicate original of the Leasehold Mortgage or a photocopy of the Leasehold Mortgage that the Clerk of the Circuit Court for Miami-Dade County, Florida has certified as being a true copy of the Leasehold Mortgage recorded among its real property records, and (ii) a written notice setting forth the name and address of the Leasehold Mortgagee.

(D) Conditions Of Leasehold Mortgage. Following the delivery of the documents in 11.03 (C) (Recording of Leasehold Mortgage) and continuing until the Leasehold Mortgagee releases the Leasehold Mortgage of record, the following provisions will apply:

- (1) LESSOR TO GIVE NOTICE OF DEFAULT. At the time that the Lessor gives Lessee written notice of the occurrence of any breach in respect of the performance of Lessee's obligations under this Agreement, the Lessor shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices in Article-24.03 (Notices) at the address for the Leasehold Mortgagee provided to the Lessor. No notice of breach to Lessee will be effective until the Lessor delivers the notice required by this Article 11.03(D) (1).
- (2) MORTGAGEE'S RIGHT TO CURE DEFAULT. The Leasehold Mortgagee may cure a breach on Lessee's part, but has no obligation to do so. The Lessor will accept the Leasehold Mortgagee's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The Lessor may exercise a remedy available to it by reason of a default on Lessee's part only if Lessee and the Leasehold Mortgagee fail to cure a breach of this Lease within (a) sixty (60) days following the time period specifically set forth in Article 13 (Termination by County or Lessee) of the Lease for a cure of a particular breach by Lessee, or (b) if no such time period is set forth, then, within thirty (30) days after the date of the delivery of the notice required by virtue of Article 11.03(D)(1) above, or if a cure is not reasonably possible within such thirty (30) day period, then within a period of time reasonably required to cure the breach through the exercise of prompt, diligent and continuous effort.
- (3) TERMINATION DELAYED DURING EXERCISE OF LEASEHOLD MORTGAGEE'S REMEDIES. Even though a breach of this Lease has occurred and neither the Lessee nor the Leasehold Mortgagee has provided for a cure within the times permitted by Article 11.03(D)(2)

above, the Lessor will not terminate the Lease for a reasonable period of time, not to exceed two (2) years, from the effective date of termination provided in the Lessor's notice of termination to Lessee, if the Leasehold Mortgagee is then making: (a) prompt, diligent and continuous efforts to gain possession of the Premises and to succeed to Lessee's interest in the Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with (b) the payment to the Lessor of all Rent and fees and charges unrelated to the exercise of Lessee's rights under this Lease, due hereunder with respect to which Lessee becomes delinquent and (c) good faith efforts to rectify other breaches under the Lease, contemporaneously with the efforts to gain possession of the Premises. Nothing herein contained shall require any Leasehold Mortgagee or its designee, as a condition to its exercise of rights hereunder, to cure any breach hereunder which is otherwise not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, except that all breaches related to life and safety shall be corrected by Leasehold Mortgagee or its designee during this period. Notwithstanding, a Successor Lessee shall be responsible for curing all breaches reasonably capable of being cured as a condition of, or subsequent to, assumption of this Lease.

- (4) **LEASEHOLD MORTGAGEE'S OPTION FOR ISSUANCE OF NEW LEASE.** Prior to the expiration of the two (2)- year period provided above in Article 11.03(D)(3), the Leasehold Mortgagee must request the Lessor to execute and deliver a new lease for the Premises in favour of a successor Lessee meeting the criteria of Article 11.03(D)(5) (a "Successor Lessee"). That new lease will have a term that coincides with what would have been the remainder of the Term, had termination of this Agreement not occurred, and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the Premises, including any fee mortgage. In order for the Lessor to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of the new lease by the delivery of written notice to the Lessor within two (2) years after the termination of this Agreement occurs, and acknowledge and return the new lease to the County for execution on the Lessor's part within twenty (20) days after the date on which the Lessor tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the Lessor a written plan to rectify, within a reasonable period of time, any breach that exists at that time in respect of any of Lessee's obligations under the terms of this Agreement, including, without limitation, any breach that may exist in respect of Lessee's obligations arising under the terms of Article 8 (Environmental Compliance). Such plan must set forth, in reasonable detail, the manner in which the Successor Lessee plans to rectify each breach; provided, however, Lessor shall waive any breaches hereunder which cannot reasonably be expected to be cured by such Leasehold Mortgagee or Successor Lessee.
- (5) **TRANSFER TO A "TRANSFeree" OR "SUCCESSOR LESSEE".** A transfer of Lessee's interest in the Premises to the Leasehold Mortgagee, or a corporate nominee affiliated with the Leasehold Mortgagee, or a purchaser at a foreclosure sale that occurs by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage (collectively, a "Transferee") will not constitute an assignment requiring the Lessor's consent under the terms of Article 11.01 (Assignment and Transfer) above. The provisions of Article 2 (Use of Premises) will govern any use of the Premises that occurs prior to, and after, a transfer to the Transferee. The Transferee may make a subsequent transfer of Lessee's interest in the Premises only

with the Lessor's prior written consent as provided in Article 11.01. The Lessor will, however, consent to the subsequent transfer to a Successor Lessee, if the proposed successor or successors to the Lessee's interest would have been acceptable to the Lessor for the Premises in the reasonable exercise of the Lessor's judgment considering the successors experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the Lessor's plan for operating the Airport. The Parties agree that the Transferee will be subject to the termination provisions of Article 13 (Termination by Lessor or Lessee). After succeeding to Lessee's interest in the Premises, a Transferee that is not a Successor Lessee must use reasonable best efforts to find a Successor Lessee satisfying the criteria set forth above in this Article 11.03(D)(5), but in any event no later than two (2) years following the effective date of termination provided in Lessor's notice. If no Successor Lessee or Lessees are found in such period to occupy at least 50% of the Premises and Improvements, then all of the Lessee's, Leasehold Mortgagee's and Transferee's interests in the Premises, the Improvements, and this Lease shall terminate in their entirety, without any right of recovery or compensation from the Lessor.

- (6) NO OBLIGATIONS OF TRANSFeree; LESSOR'S RIGHT TO TERMINATE IF OBLIGATIONS NOT SATISFIED. If a Transferee succeeds to Lessee's interest in the Premises by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to the Leasehold Mortgagee under the terms of the Leasehold Mortgage, the Transferee and its successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Agreement that arise or accrue during the period between the time at which the Transferee succeeds to Lessee's interest in the Premises and the time at which it divests itself of that interest. The foregoing limitation will not preclude the Lessor from terminating this Agreement if the Transferee fails to rectify, without cost to Lessor, any breach existing in respect of Lessee's obligations at the time the Transferee succeeds to Lessee's interest in the Premises, including, without limitation, any obligation arising under the terms of Article 8 (Environmental Compliance), provided that Lessor has delivered, to the Transferee, the same notice, and opportunity to cure such breach, as Lessor is required to give to Lessee pursuant to the terms of this Lease for the particular breach; provided, however, that Lessor shall waive any breaches by Lessee hereunder which cannot reasonably be expected to be cured by such Leasehold Mortgagee or Successor Lessee.
- (7) NO AMENDMENT OF LEASE WITHOUT LEASEHOLD MORTGAGEE'S CONSENT. Without the Leasehold Mortgagee's prior written consent, Lessee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at law to cancel this Agreement, or to voluntarily surrender possession of the Premises to Lessor, except as provided herein; provided, however, notwithstanding the foregoing, notice to Leasehold Mortgagee pursuant to Article 11.03(D)(1), but not its consent, shall be required for adjustments pursuant to the express terms of this Agreement in accordance with Articles 1.07 (Review by FAA), 3.03 (Rental Rate Review), 19.02 (Adjustment of Terms and Conditions), and 22.07 (Severability). Without the Leasehold Mortgagee's prior written consent, the Lessor may not cancel this Agreement and accept a surrender of possession of the Premises, except at the end of the then-current Term (subject to Lessee's right to extend the Term as set forth in Article 1.01 of this Agreement) or in connection with the Lessor's exercise of its remedies following an occurrence of a breach in the performance of any of Lessee's obligations, subject to Leasehold Mortgagee's notice and cure rights pursuant to Articles 11.03(D)(1)-(4). The Leasehold Mortgagee will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this Article 11.03(D) (7).

- (8) **RIGHTS OF LEASEHOLD MORTGAGEE IN INSURED LOSSES.** The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements, as may be applicable, and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, Leasehold Mortgagees and any lessees holding an interest with respect to the Premises. The Leasehold Mortgagee is entitled to receive, and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgagee, any portion of insurance proceeds arising from damage or destruction to Lessee's interest in the Premises not applied to the restoration of that portion of the Premises that remains following such damage or destruction. If, however, the Premises cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction and commercial feasibility as immediately before the damage or destruction, then Lessee may terminate this Agreement by delivering written notice to the Lessor by a date that is on or before one hundred twenty (120) days after the date of such damage or destruction. Lessee's notice must specify the date on which the termination will become effective, which date will not be earlier than the date of such damage or destruction. If a termination occurs in accordance with the foregoing, Lessee shall pay and shall satisfy all Rent, and fees and charges, due and accrued hereunder, unrelated to the exercise of Lessee's rights under this Lease, up to such date of such termination, and shall perform all of the obligations of Lessee hereunder to such date, and thereupon, this Agreement and the Term shall cease and terminate. The provisions of this Article 11.03(D)(8) are subject to the rights of any Leasehold Mortgagee under the documents relating to any Leasehold Mortgage. Lessor acknowledges and agrees that any insurance proceeds not applied to a restoration pursuant to this sub-article shall be subject to the lien or liens of any Leasehold Mortgage and the rights and requirements of the Leasehold Mortgagee. If this Agreement is terminated pursuant to the provisions of this Article 11.03(D)(8), Lessor acknowledges and agrees that the Leasehold Mortgagee can apply the Insurance proceeds to the reduction of indebtedness and all other amounts owing to Leasehold Mortgagee pursuant to the Leasehold Mortgage.
- (9) **RIGHTS OF LEASEHOLD MORTGAGEE IN CONDEMNATION.** If a taking of any part of the Premises occurs, including a taking brought by Lessor or any constituent element of Lessor, the Leasehold Mortgagee will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, Leasehold Mortgagee and any other party holding an interest with respect to the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgagee, any portion of a condemnation award arising from a taking of Lessee's interests not applied to the restoration of that portion of the Premises that remains following the taking to a complete architectural unit. After payment to the Lessor by the condemning authority of whatever compensation and damages are determined to be owing to the Lessor for Lessor's property interests in the Premises, and after the indebtedness the payment of which is secured by the lien of the Leasehold Mortgagee is discharged in full by an application of a condemnation award in accordance with the terms of the preceding sentence and after payment to the Lessee by the condemning authority of whatever compensation and damages are determined to be owing Lessee for Lessee's property interests in the Premises, the Lessor is entitled to receive any remaining portion of the condemnation award. If a partial taking of the Premises occurs, this Agreement will continue in

effect with respect to that portion of the Premises not taken and, effective as of the earlier of the dates on which the condemning authority takes title to or possession of the part taken, the Rent payable under the terms of this Agreement will be reduced in proportion to the reduction in the area of the Premises. If, however, the remaining portion of the Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction and commercial feasibility as immediately before the taking, then Lessee may terminate this Agreement by delivering written notice to the Lessor by a date that is on or before one hundred twenty (120) days after the date of the taking. Lessee's notice must specify the date the termination will become effective, which date will not be earlier than the date of such taking. If a termination occurs in accordance with the foregoing, Lessee shall pay and shall satisfy all Rents and fees and charges, unrelated to the exercise of Lessee's rights under this Lease, due and accrued hereunder up to such date of such termination and shall perform all of the obligations of Lessee hereunder to such date, and thereupon this Agreement and the Term shall cease and terminate. If a taking for a temporary period occurs, this Agreement will continue in full force and effect and the entire award payable in respect of that taking will be payable to Lessee, except for any portion sought by, and attributable solely to Lessor's interest in the Premises, subject to provisions of any agreements among Lessee, the Leasehold Mortgagee and any lessee holding an interest with respect to the Premises.

- (10) **LESSOR WAIVER OF RIGHT TO CERTAIN RENT.** During the entire Term hereof, Lessor will have no right, and expressly waives any right, arising under Applicable Law, in and to the rent that will become due to Lessee under the terms of any approved sublease of any part of the improvements. Lessee may assign such rents to the Leasehold Mortgagee without any consent or approval of the County. Nothing in this Article 11.03 shall (a) alter Lessee's obligations to commence paying Lessor fair market Rent on the improvements as provided in Article 3 (Rentals and Payments) or (b) provide Lessee with any ownership claim to the improvements or the rent therefrom after the conclusion of the Term.
- (11) **NON MERGER OF FEE AND LEASEHOLD INTEREST.** Under no circumstances will the fee estate of the Lessor and the leasehold estate created by this Agreement or any sublease created hereunder merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.

(E) **Estoppel Certificate.** Upon written request from time to time by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of Lessee's interest in the Premises, the Lessor shall execute and deliver to the requesting party, within thirty (30) days following the date of receipt of such request, an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the Lessor shall certify, to the best of its knowledge, information and belief: (i) the monthly payment on account of Rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that Rent; (ii) that this Agreement is in full force and effect; (iii) the specific nature of any breach that the Lessor knows to exist in respect of either Party's performance of its respective obligations under the terms of this Agreement; (iv) whether there is any then-outstanding mortgage, encumbrance or pledge of Lessor's interest in the Premises; and (v) such other matters as may be reasonably requested by Lessee, except that the County, at its sole discretion, shall determine the form of the certification. The Lessor and Lessee intend that any statement delivered pursuant to this Article 11.03(E) may be relied upon by Lessee, and any Leasehold Mortgagee, prospective Leasehold Mortgagee, or prospective assignee of Lessee's interest in the Premises.

(F) **Leasehold Mortgagee's Right To New Lease.** The provision of this Article 11.03 will survive (i) termination of this Lease prior to the expiration of the Term due to a default by Lessee (subject to Leasehold Mortgagee's

notice and cure rights set forth in Article 11.03(D)) and (ii) rejection or disaffirmance pursuant to any bankruptcy Law or proceeding or other similar law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Lessee or otherwise, and will continue in full force and effect thereafter to the same extent as if this Article 11.03 were a separate and independent contract made by the Lessor, Lessee, and the Leasehold Mortgagee. The Lessor's agreement, set forth in this Article 11.03, to enter into a new lease with the Leasehold Mortgagee constitutes a separate agreement with the Lessor and the Leasehold Mortgagee. The Lessor agrees that the Leasehold Mortgagee shall be a third-party beneficiary under this Agreement, and that such third-party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any Party.

11.04 Assignment: Notwithstanding the above, this Lease Agreement shall be assignable by the Lessee to wholly-owned Affiliates of Embassair Group US, Inc. or Lessee, or to Lessee's financing parties, including Leasehold Mortgagees, without MDAD's consent. The Lease shall be assignable by Lessee to any other assignee, with MDAD's consent, which shall not be unreasonably withheld, delayed or conditioned. "Affiliate" means, in relation to any Person, any other Person: (i) which directly or indirectly Controls through one or more intermediaries, or is Controlled by, or is under common Control with, such Person; or (ii) which directly or indirectly through one or more intermediaries beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (iii) which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly through one or more intermediaries beneficially owned or held by such Person, or (iv) who either directly or indirectly through one or more intermediaries holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. "Person" means any natural person, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any governmental authority. A Person shall include any officer, director, member, manager, employee or agent of such Person. "Controls" or "Controlled" means, for the purposes of the definition of Affiliate, possession, directly or indirectly through one or more intermediaries of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

11.05 Intentionally Omitted.

11.06 Lessor Mortgage: Lessor represents and warrants that as of the Effective Date, it has not mortgaged or encumbered its fee interest in the Premises. Lessor may not mortgage or encumber its fee interest in the Premises unless such mortgage or encumbrance is subject in all respects to the terms and provisions of this Agreement and Lessor has obtained a non-disturbance agreement in favor of Lessee, which must be in form and content reasonably satisfactory to Lessee.

ARTICLE 12

Insurance

12.01 Insurance Required: In addition to such insurance as may be required by law, the Lessee shall maintain, without lapse, for so long as it occupies the Premises, the following insurance:

- (A) Commercial General Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional Insured with respect to this coverage.
- (B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

- (C) Pollution and Remediation Legal Liability Insurance, to the extent required under Article 8.16, in an amount not less than \$2,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials at the Lessee's Premises. This policy shall be issued on a claims-made basis.
- (D) Builders Risk and Property Insurance The Lessee and/or its sub lessee(s), at its (and/or their) sole cost and expense, throughout the Term, shall keep the improvements insured on an "All Risk" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee) by fire, lightning, tornado, hurricane, windstorm, hail, flood, earthquake, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, Aircraft, vehicles and smoke, or any other casualty in an amount not less than 100% of the full replacement value of the Improvements to the extent such coverage is commercially available at commercially reasonable rates. The full replacement value of the Improvements shall be established as of the date each Improvement is constructed and a certificate of completion (or certificate of occupancy) for same is issued by the appropriate governing authority with jurisdiction over same and shall be re-established at intervals of not more than three (3) years thereafter, by the firm and professional property evaluators used by the County for establishing replacement values for County property. Any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee.
- (E) Business Interruption Insurance The Lessee at its sole cost and expense throughout the Term shall maintain business interruption insurance at a minimum, in an amount sufficient to continue making payment of Land Rent, and payments of taxes and insurance, during the rebuilding period as a result of damage to the Improvements.

All Insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "A-" as to financial strength, and no less than "VII" as to financial size in accordance with the latest edition of "Best's Key Rating Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the MDAD's Risk Management Office.

12.02 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter if requested by Lessor, the Lessee shall furnish or cause to be furnished certificates of insurance to the Department which certificates shall clearly indicate that:

- (A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (B) The policy cancellation notification provisions specify at least thirty (30) days advance written notice of cancellation to the County; and
- (C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies.
- (D) The County is named as a loss payee with respect to the required builder's risk and property insurance provided by the Lessee.

On said insurance certificates, unless specifically shown to be excluded thereon, commercial general liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies.

The County reserves the right to require the Lessee to obtain and maintain such amended insurance coverage, in the case in which, in the County's reasonable judgment, such amended insurance coverage would be necessary to protect the County from risks which are not known, or reasonably anticipated, as of the date of the Effective Date, provided that such amended insurance coverage would be the least burdensome obligation of the Lessee in order to provide such protection to the County, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective thirty (30) days after the date of receipt of such notice, subject to Lessee's right to dispute such requirement.

12.03 Compliance: Compliance with the requirements of this Article 12 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

12.04 Right to Examine: The Department reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection at the offices of the Department.

12.05 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the County, its officers, employees, agents and instrumentalities, as limited by Section 768.28, Florida Statutes.

12.06 Property Loss Policies Endorsements: All property insurance policies shall contain an endorsement that the proceeds of any loss shall be made payable to (i) in the event any leasehold mortgage debt is outstanding, the Leasehold Mortgagee and applied in accordance with the leasehold mortgage debt or (ii) in all other events, in accordance with the terms of this Agreement. All such insurance proceeds shall be held as agreed upon by Lessee and Lessor and such proceeds shall be used and applied in the restoration, reconstruction or replacement of the loss or damaged property for which such insurance moneys are payable hereunder in accordance with the applicable provisions of this Agreement.

ARTICLE 13

Termination

13.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the Lessor may, at its option, terminate this Agreement after thirty (30) days' notice in writing to the Lessee, unless the default is cured within the notice period.

13.02 Insurance Defaults: The Lessor shall have the right, upon thirty (30) days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 12 (Insurance) hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice or grace period.

13.03 Other Defaults: The Lessor shall have the right, upon thirty (30) days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, If correction cannot reasonably be completed within such 30-day period, the Lessee has commenced corrective steps within such 30-day period and diligently pursues same to completion:

- (A) Failure of the Lessee to comply with any material covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein by the Lessee.

13.04 Immediate Termination: The happening of the following events shall constitute a default by the Lessee and this Agreement shall permit Lessor to terminate this lease immediately, effective as of the date of Lessee's receipt of notice thereof: abandonment of the Premises or discontinuance of operations; failure of the Lessee for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Agreement; or if a lien is filed against the leasehold interest of the Lessee and not removed within a reasonable time.

13.05 Actions at Termination:

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the Lessor on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises in the condition required under Article 5 (Maintenance and Repairs) herein with all repairs for which the Lessee is responsible shall be completed prior to surrender and shall execute appropriate documents confirming that title to such improvements in Lessee's name has been transferred to Lessor. In no event shall Lessor be required to pay any compensation or reimbursement to Lessee for such transfer of title. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Premises; provided, however, that if immediate termination occurs under Article 13.04, Lessee shall be allowed up to fifteen (15) calendar days from the receipt of notice of termination to remove such personal property.

(B) If the Lessor advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions of such consultant regarding environmental clean-up efforts that may be required, and shall comply with any other clean-up requirements imposed on the Lessee by Federal, State or County laws, regulations or codes.

(C) In the event of termination for default, the Lessor shall be entitled to recover immediately, without waiting until the due date of any future Rent, or until the date fixed for expiration of the Agreement, the following amounts as damages the reasonable costs of re-entry and re-leasing including without limitation the cost of any clean up, alteration, repair, maintenance, refurbishment, removal of personal property and fixtures of the Lessee, or any other reasonable expense occasioned by failure of the Lessee to quit the Premises upon termination and to leave them in the required condition, reasonable attorney's fees, court costs, and expenses of litigation through all levels of legal proceedings.

13.06 Lien Upon Personal Property: In the event of termination for default, the Lessor shall have a lien upon all personal property of the Lessee located at Premises to secure the payment of any unpaid Rent, and, fees and charges accruing under the terms of this Agreement.

13.07 Right to Show Premises: At any time within six (6) months prior to the end of the Term, or any time after the Lessee has been given notice of termination for default, pursuant to Article 13 (Termination) or Article 1.06 (III) (Reduction of Term) hereof, the Lessor shall have the right to enter on the Premises for the purposes of showing the Premises to prospective tenants or users during regular business hours.

13.08 Other Terminations: This Agreement shall be subject to termination by the Lessor or the Lessee in the event of any one or more of the following:

(A) The permanent abandonment of the Airport.

(B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part of parts thereof, in such a manner as to substantially restrict the Lessee from operating there from for a period in excess of ninety (90) consecutive days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States for just compensation in the event of any such assumption.

(C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of ninety (90) days. In the event of termination for such reason, Lessee's exclusive remedy shall be termination or reinstatement of this lease by the County, at its sole discretion, for a period of time equal to the number of days that the injunction was in effect in excess of said ninety (90) days.

13.09 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by the Lessee, on five (5) occasions within a twenty-four (24)-months' period regardless of whether the Lessee has cured each individual condition of breach or default as provided for in Sub-Article 13.01 (Payment Default), Sub-Article 13.02 (Insurance Defaults), and Sub-Article 13.03 (Other Defaults) above, the Lessee shall be determined by MDAD to be an "habitual violator". At the time that such determination is made the Department shall issue to the Lessee a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon the seventh (7th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt of said termination, the Lessee shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Sub-Article 13.05 (Actions at Termination) hereof.

13.10 Termination by Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of Premises or voluntary discontinuance of operations at the Airport for any period of time exceeding sixty (60) consecutive calendar days, unless such abandonment or discontinuance has been caused by casualty or governmental order that prevent the lessee's use of the Premises for the purposes authorized in Article 2.02 (Use of Premises) hereof.

13.11 Lessor's Default: In addition to any other rights or remedies specifically granted to Lessee elsewhere in this Lease, if Lessor should be in material default in the performance of any of its obligations or Lessor violates any of its representations under this Lease, and such default continues for a period of more than fifteen (15) days after receipt of written notice from Lessee specifying such default, or if such default is of a nature to require more than fifteen (15) days to remedy and continues beyond the time reasonably necessary to cure (provided Lessor must have undertaken procedures to cure the default within such thirty-day period and diligently pursues such efforts to cure to completion), Lessee may, in addition to any other remedy at law or in equity, at its option, upon notice, terminate this Lease, or may incur any reasonable expense necessary to perform the obligation of Lessor specified in such notice and deduct such expense from the Rents or other obligations next becoming due. Notwithstanding the foregoing, if Lessor's default shall result in a real and imminent danger to the health and safety of the person or property of Lessee or any agent, employee, invitee of Lessee, Lessee shall only be obligated to provide Lessor with reasonable notice under the circumstances before exercising its rights as set forth in the previous sentence.

ARTICLE 14 **Special Conditions**

14.01 Quality of Services: The Lessee shall furnish the services required and authorized, pursuant to Article 2 (Use of Premises) hereof, on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof.

14.02 Nondiscriminatory Prices: For sales of products or services on the Premises or the subletting of any facilities as permitted by MDAD, Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service or sublease; provided, however, that the Lessee may make reasonable, customary and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers of the Lessee's services.

14.03 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to Section 22 of Part V of the Federal Aviation Administration's standard grant assurances, to enforce the provisions of Articles 14.01 (Quality of Services) and 14.02 (Nondiscriminatory Prices) above, agrees that the Lessor may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. Should the Lessor determine that the Lessee is not in compliance with the provisions of Articles 14.01 (Quality of Services) or 14.02 (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to Article 13.03 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the Lessor to the remedies provided in this Agreement or by law.

14.04 Air Shows and Special Events: Upon at least sixty (60) days written notice from the Department, the County may require the Lessee to surrender portions of the Premises for certain periods of time during the term of this Agreement for the purpose of allowing the use of designated portions of the Premises by others in connection with air shows and other special events. Said use will not exceed ten days or more than three events per year. For any day or part of a day that the Premises are so used, rental payments under Article 3.01 (Rentals) will be abated. The Department shall actively keep the Lessee advised of all of the planning for such events, air shows, or County sponsored special events, if portions of the Premises are to be so used.

ARTICLE 15

Equal Employment Opportunity, Nondiscrimination and Affirmative Action

15.01 Equal Employment Opportunity: In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the Lessee shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Lessee shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. The Lessee shall comply with all applicable provisions of the Civil Rights Act of 1964; Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, and the Americans with Disabilities Act. The Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficient (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §112.041, §112.042, §112.043 and the Miami-Dade County Code Section 11A1 through 13A1, Articles 3 and 4.

The Lessee shall assign responsibility to one of its officials to develop procedures that will assure that the policies of Equal Employment Opportunity and Affirmative Action are understood and implemented.

15.02 Nondiscriminatory Access to Premises: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation, as amended from time to time.

15.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Article 15.01 Equal Employment Opportunity and Article 15.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

15.04 Nondiscrimination: During the performance of this Agreement, the Lessee agrees as follows: The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Lessee shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to The Lessee books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, this Agreement may be canceled, terminated, or suspended in whole or in part in accordance with the Termination of Agreement section hereof and the Lessee may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Lessee will include Article 15.01 Equal Employment Opportunity and Article 15.02 Nondiscriminatory Access to Premises of this Article in the Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Lessee shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

15.05 Disability Nondiscrimination Affidavit: By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Lessee attests that this is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Lessee or any owner, subsidiary or other firm affiliated with or related to the Lessee is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution, such violation shall render this Lease terminable in accordance with the Termination of Agreement section hereof. This Lease shall be void if the Lessee submits a false affidavit pursuant to this Resolution or the Lessee violated the Act or the Resolution during the term of this Lease, even if the Lessee was not in violation at the time it submitted its affidavit.

15.06 Affirmative Action/Nondiscrimination of Employment Promotion and Procurement Practices: (County Code Section 2-8.1.5): In accordance with the requirements of County Code Section 2-8.1.5, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Procurement Management. Said firms must also submit, as a part of their Lease to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Procurement Management. Firms claiming exemption must submit, as part of their Lease to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit in accordance with County Code Section 2-8.1.5. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with County Code Section 2-8.1.5. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their Lease.

ARTICLE 16

Security and Special Provisions

16.01 Security: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises, any Improvements thereon, its equipment and property on the Airport. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property shall be the sole responsibility of the Lessee and shall involve no cost to the Lessor. The Lessee further understands and acknowledges that it may be required to alter security measures as may be dictated from time to time by Federal, State, local or departmental mandate and that the cost of execution of such mandate may be at the sole expense of the Lessee.

16.02 Right of Flight: There is hereby reserved to the County, its successors and assigns, for the use and benefit of the County and the public, a right of flight for the passage of Aircraft in the air space above the surface of the Premises herein leased, together with the right to cause in said air space such noise as may be inherent in the operation of Aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from or operating on the Airport.

16.03 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the leased Premises to such a height so as to comply with Federal Aviation Regulations, Part 77 and with the Code of Miami-Dade County, whichever is more restrictive.

16.04 Alcohol and Drug Testing: The Lessee acknowledges that the County, as a public agency sponsor under the provisions of the Airport and Airway Improvement Act of 1982, as amended, has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Lessee acknowledges that the Department, on behalf of the County, has the right to require users of the Airport (including all Lessees, Permittees, and Licensees) to establish reasonable programs to further the achievement of the obligations described herein. Accordingly, the Lessee shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport and for the same or similar screening based on a reasonable suspicion that an employee, while on duty at the Airport, may be under the influence of alcohol or drugs. The Lessee shall make reasonable

good faith efforts to negotiate amendments to any existing contract(s), which may serve as a bar to the Lessee's implementation of its obligations hereunder.

16.05 Drug-Free Workplace Default: The Lessee acknowledges it has provided to the Lessor a Drug-Free Workplace Affidavit certifying that it is providing a drug-free workplace for its employees, as required by County Ordinance No. 92-15, adopted on March 17, 1992, as such may be amended from time to time ("Ordinance"). Based on the provisions of said Ordinance, the Lessor shall have the right, upon thirty (30) days written notice to the Lessee, to terminate this Agreement in the event the Lessee fails to provide, as of each anniversary of the effective date of this Agreement, the annual re-certification affidavit as required by the Ordinance; provided, however, that such termination shall not be effective if the Lessee submits the required Affidavit within the notice period.

Further, this Agreement shall be terminated upon not less than fifteen calendar days written notice to the Lessee and without liability to the Lessor, if the Lessor determines any of the following:

- (1) That the Lessee has made a false certification in its execution of the Affidavit submitted or in its annual re-certification as required by the Ordinance;
- (2) That the Lessee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual re-certification; or
- (3) That such a number of employees of the Lessee have been convicted of violations occurring in its workplace(s) as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

ARTICLE 17

Employees

17.01 Control of Employees: The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.

17.02 Employee Covenants Violations: In the event the Lessee is in default of the covenants in Article 17.01 (Control of Employees) for failure to properly control its employees, the Lessee understands that the Lessor shall have the right to require the Lessee to take immediate action to correct the discrepancy.

ARTICLE 18

Civil Actions

18.01 Governing Law/Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights or obligations of the Parties hereto shall be brought in the appropriate courts of the State of Florida.

18.02 Notice of Commencement of Civil Action: In the event that the Lessor or the Lessee commences a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the Lessor and the Lessee agree that service of process shall be made pursuant to the rules of civil procedure in the court in which the action has been filed.

18.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions of Article 18.02 (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida

Department of State in accordance with Section 607.0501, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 19

Trust Agreement

19.01 Incorporation of Trust Agreement by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the Parties hereto that the provisions of the Amended and Restated Trust Agreement dated as of the 15th day of December, 2002, by and between the County and the JPMorgan Chase Bank as Trustee and Wachovia National Bank as Co-Trustee, (the "Trust Agreement") which Trust Agreement is incorporated herein by reference thereto, shall prevail and govern in the event of any conflict or inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the Rent, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement is available for inspection in the offices of the Department during normal working hours.

19.02 Adjustment of Terms and Conditions: If, at any time during the Term, a court or Federal Agency of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the Rent, and fees and charges required to be paid hereunder to the County by the Lessee or by other Lessees under other Agreements of the County for the Lease or use of facilities used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the Rent, and such, fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the Rent, and such fees and charges payable by the Lessee and others shall not thereafter be unjustly discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the Rent, and such fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment or Rent, and such fees and charges upon the issuance of written notice from the Department to the Lessee.

19.03 Lessee Right to Terminate: In the event the terms and conditions of this Agreement, including the Rent, and fees and charges payable hereunder, have been substantially modified pursuant to Article 19.02 (Adjustment of Terms and Conditions) above, the Lessee at any time within one year following the effective date of such modification, may terminate this Agreement by giving ninety (90) days written notice to the County, without liability by either Party to the other.

ARTICLE 20

Rights Reserved to the Lessor

20.01 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the Lessor.

20.02 Rights of Lessor at Airport: The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any and all liability to the Lessee for business damages occasioned during the making of such repairs, alterations and additions, except those occasioned by the sole active negligence of the County, its employees, or agents.

20.03 Rights to be Exercised by Department: Wherever in this Agreement rights are reserved to the Lessor or County, such rights may be exercised by the Department.

20.04 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning Appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County, to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief; nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

ARTICLE 21

Agreement Subject to Rights of U.S. Government

21.01 Easements or Encumbrances: This Agreement is made by the Lessor and accepted by the Lessee subject to all of the existing easements and encumbrances and to subsequent easements or encumbrances and to all of the terms, conditions, reservations, exceptions, limitations and restrictions set forth in any applicable Quit-Claim Deed, and subject to all of the rights of the Government therein enumerated.

21.02 Government Use of Airport:

In the event the Government, acting under the provisions of any applicable Quit-Claim Deed, shall take over the use of the leased Premises or the Airport, and such use shall so restrict the Lessee in its operations as to make continued use of the Premises by the Lessee impractical, then:

(A) This Agreement and rights and obligations hereunder shall, at the option of the Lessee, exercised in writing, either:

(1) automatically terminate, except as herein under provided; or (2) be suspended during the time the Premises or the Airport are being so used by the Government and the term of this Agreement shall be automatically extended for the same period.

(2) Any monies paid by the Government for the upkeep of, repairs to and the maintenance and replacement of facilities at the Airport shall be used by the County for such purposes.

(3) Any monies paid by the Government to the County as Rent for the use of the Premises shall be retained by the County; provided, however, that if the Lessee shall elect to suspend this Agreement for the period of the Government's use of the Premises, pursuant to subparagraph (A) (1) above, and rentals are paid by the Government for the use of any personal property or unamortized capital improvements installed thereon by Lessee, the Rent received by the County for use of the Lessee's said property or improvements shall be for the benefit of the Lessee and paid thereto.

(B) In the event the Government shall take over the use of the Airport, and such use by the Government shall not materially restrict or hamper the Lessee in its operations, the Lessee shall remain in possession of said Premises and shall continue to pay the Rent, fees, and charges specified herein to be paid.

21.04 Federal Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United States of America shall be suspended.

ARTICLE 22 Other Provisions

22.01 No Representation as to Condition of the Premises: The Lessor makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by the Lessee by reason of any such physical condition.

22.02 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

22.03 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either Party to the other shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested or by overnight or other delivery services whereby a receipt is available to the Parties as follows:

As to the Lessee:

Gate 301 Miami, Inc.
Miami Opa Locka Executive Airport

Miami, FL 33186

With a copy to:

Hogan Lovells US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
Attn: Jorge Diaz-Silveira, Esq.

As to the County or Department:

CEO-DIRECTOR
Miami-Dade Aviation Department
P.O. Box 025504
Miami, Florida 33102-5504

or to such other address as may hereafter be provided by the in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

22.04 Interference: The Lessee further expressly agrees to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard.

22.05 Authorized Uses Only: The Lessee shall not use or permit the use of the Premises or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County or any policies of insurance written on behalf of the Sub-Lessor or Lessee under this Agreement.

22.06 Binding Effect: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

22.07 Severability: If any provision of this Agreement or the application thereof to either Party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

22.08 Inspections: The authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement. This right of inspection shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

22.09 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default.

22.10 Quiet Enjoyment of Others: The Lessee shall control the actions of its employees, agents, invitees and those doing business with it, so as to not unreasonably annoy, disturb or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Airport.

22.11 No Waiver: There shall be no waiver of the right of either Party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either Party, unless such waiver is explicitly made in writing by the other Party. Any previous waiver or course of dealing shall not affect the right of either Party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other Party.

22.12 Radon Disclosure: In accordance with Chapter 404.056, Florida Statutes, the following disclosure is hereby made:

Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to

persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

22.13 Destruction of Premises: In the event the Premises shall be destroyed or so damaged or injured by fire, windstorm, flood or other casualty (and in each such event the Lessee was not at fault in whole or in part) during the life of this Agreement that the Premises or any portion thereof are rendered untenable, the County shall have the right, but not the obligation, to render said Premises or damaged portion thereof tenantable by repairs completed within a reasonable period of time.

- (A) Total Destruction: In the event the County elects not to render the Premises tenantable, if destroyed or damaged in their entirety, the Lessee shall be so notified in writing by the Department, and this Agreement shall be deemed terminated as of the date of the casualty, with the Lessee being liable only for payment of Rent on a prorated basis as to whatever portion(s) of the Premises which were tenantable and used by the Lessee following the casualty. In such event, the Department shall endeavor to find adequate replacement premises for the Lessee in existing facilities on the Airport.
- (B) If the damaged portion of the Premises is not rendered tenantable by the County within a reasonable period of time, and the Lessee shall determine that: 1) the loss of the damaged portion of the Premises shall have a materially adverse impact on the ability of the Lessee to utilize the Premises for the purposes described in Article 2; or 2) would require the Lessee to obtain other space off the Premises in order to substantially conduct the operations of the Lessee originally conducted within the Premises, then, in either such event, upon written notice to the County, the Lessee may cancel this Agreement as of a date which shall be not later than three months from the giving of such notice, if the repairs are not completed within 90 days following such written notice of intent to cancel, or if the repairs cannot be reasonably completed within such ninety (90)-day period the County has not commenced repairs within such time. In the event of cancellation, the Rent for the untenable portion of the Premises shall be paid only to the date of such fire, windstorm, flood, or other casualty. If the Agreement is not canceled following any such casualty, the Rent shall be abated as to the portion of the Premises rendered untenable.

If the casualty was caused in whole or in part by the Lessee, its officers, employees, agents, contractors or trespassers, then the Lessee shall not have the right to terminate this Agreement and shall be responsible under other provisions of this Agreement for payment to the County of all damage to the Premises, plus the loss of Rent attributable to the damaged or destroyed premises.

22.14 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 9.02 (Environmental Compliance) Lessor's right and obligation to make certain repairs, alterations, and additions under Articles 5 (Maintenance by Lessor and 20.02 (Rights of Lessor at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under Article 16.02 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises for the Term; provided, however, that the Lessor shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the Lessor is acting in its governmental capacity, or by Acts of God.

22.15 Definition of Day: For the purposes of this Agreement, except where otherwise expressly set forth in this Agreement and the Exhibits, "days" shall mean all days except Saturday, Sunday, and official County holidays.

22.16 Interpretation of Agreement: This Agreement is the result of negotiation between the Parties hereto and has been typed/printed by one Party for the convenience of both Parties, and the Parties covenant that this Agreement shall not be construed in favor of or against any of the Parties hereto. All exhibits referenced in this Agreement are hereby incorporated into, and made a part of, this Agreement.

22.17 Force Majeure: The terms and conditions of this Agreement (with the exception of the obligation of the Lessee to pay the amounts required by terms of this Agreement) shall be subject to Force Majeure (as defined below). Neither the County nor the Lessee shall be considered in breach in the performance of its obligations hereunder, if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, fire, wind, flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof beyond the reasonable control of the Party affected, provided that notice of such force majeure is given by the affected Party, to the other within ten (10) days of the beginning of said force majeure (individually and collectively, as applicable herein, "Force Majeure"). In addition to, and without limiting the foregoing, Force Majeure shall include any other events which Tenant did not cause, or which Tenant could not have avoided by the exercise of commercially reasonable efforts, for such period of time as may be necessary in order to account for the period of delay resulting from any such events. Should one or both of the Parties be prevented from fulfilling its contractual obligations by a state of Force Majeure lasting continuously for a period of six months, the Parties shall consult with each other regarding the future implementation of this Agreement.

22.18 Term Sheet: As of the Effective Date, that certain Term Sheet for Development Lease Agreement between Miami-Dade County, Florida, by and through the Miami-Dade Aviation Department and Gate 301 Miami, Inc., executed by the County on September 14, 2018, and by the Lessee on September 17, 2018, shall be null, void and of no further force or effect.

22.19 Entirety of Agreement: The Parties hereto agree that this Agreement sets forth the entire agreement between the Parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the Parties hereto.

22.20 Memorandum of Lease: On the Lease Commencement Date, the Parties hereto shall promptly execute, acknowledge, and deliver duplicate originals of a memorandum of lease (the "Memorandum of Lease") which shall include, without limitation, (i) the name and address of the Parties to this Agreement; (ii) a reference to this Agreement, with its date of execution; (iii) a description of the leased premises; and (iv) the Term. On the Lease Commencement Date, the Parties hereto shall file or cause to be filed such Memorandum of Lease for recordation with the Land Records of the Office of the Miami-Dade County Clerk. Any fees imposed upon such recording shall be paid by the Lessor. If the Parties hereto amend this Agreement, then the Parties shall have the same rights and obligations regarding a memorandum and of such amendment as they do for the Memorandum of Lease.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their appropriate officials as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

Witnesses:

ATTEST: Harvey Ruvin, Clerk

By: _____
Name: _____

By: _____
Deputy Clerk

By: _____
Name: _____

(SEAL)

GATE 301 MIAMI, INC.

BY: _____

Witnesses:

Title: C.E.O.

By: _____
Name: Jorge Diaz-Silvestra

DEVHUX Frank
Print Name

By: _____
Name: Dana Turina

VIEWING

1. VIEW
2. SECTIONAL VIEW
3. SECTIONAL VIEW
4. SECTIONAL VIEW
5. SECTIONAL VIEW
6. SECTIONAL VIEW
7. SECTIONAL VIEW
8. SECTIONAL VIEW
9. SECTIONAL VIEW
10. SECTIONAL VIEW
11. SECTIONAL VIEW
12. SECTIONAL VIEW

TABLE

ITEM	DESCRIPTION	UNIT	VALUE
1	LENGTH	INCHES	10.00
2	WIDTH	INCHES	4.00
3	HEIGHT	INCHES	2.00
4	WEIGHT	POUNDS	1.00
5	VOLUME	CUBIC INCHES	10.00
6	AREA	SQ. INCHES	10.00
7	PERIMETER	INCHES	10.00
8	DIAMETER	INCHES	1.00
9	RADIUS	INCHES	0.50
10	ANGLE	DEGREES	90.00
11	CHORD	INCHES	1.00
12	ARC LENGTH	INCHES	1.00

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8	DIAMETER	INCHES	1.00
9	RADIUS	INCHES	0.50
10	ANGLE		

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EXHIBIT B
TAC-N AIRPORT PROCEDURES

Exhibit B
TAC-N Airport Procedures

MIAMI-DADE COUNTY, FLORIDA

AVIATION DEPARTMENT – FACILITIES DIVISION

TENANT AIRPORT CONSTRUCTION NON-REIMBURSABLE (TAC-N) PROJECTS

PURPOSE

To provide details for the initiation and management of a Tenant Airport Construction Program non-reimbursable project.

DEFINITIONS

FAA	Federal Aviation Administration
A/E	Tenant's State Registered Architect or Engineer responsible for the design of the project.
BCC	Board of County Commissioners
GSA	General Services Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC/TAC	Miscellaneous Construction Contract/Tenant Airport construction
MDAD	Miami Dade Airport Aviation
NTP	Notice to Proceed
PM	Project Manager
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Business Partner, Lessee

GENERAL INFORMATION

Summary of Department Process for Design and Construction of TAC-N Projects

When an airport tenant wishes to improve or expand a leasehold area, the tenant must contact the MDAD Manager, Properties and Commercial Operations to discuss the proposed improvement or expansion. The Manager, Properties and Commercial Operations or designee determines whether the proposed design and construction will be a reimbursable or a non-reimbursable project.

If the determination is that the proposed design and construction are non-reimbursable, the tenant must submit a letter to MDAD requesting approval to design and construct the project, detailing the proposed construction and providing a proposed schedule and cost estimate.

The Manager, Properties and Commercial Operations or designee prepares a Quick Check Form and forwards it to the MDAD Manager, Planning, the MDAD Design Chief, the MDAD Manager, Maintenance Engineering, the MDAD Manager, Terminal Facilities, and others as appropriate, for review and approval. The following documents, at a minimum, are attached to the form:

- Tenant's Letter to MDAD requesting MDAD to approve the project shall include the following attachments:
- Conceptual drawings/sketches
- Completed Tenant Project Information Sheet providing the following information:
 - ✓ Project Name
 - ✓ Scope of Work (project description)
 - ✓ Project Cost (tenant's estimate) broken down between design and construction
 - ✓ Tenant's Name and Contact Person's name and telephone numbers
 - ✓ A/E of Record Name and Contact Person's name and telephone numbers
 - ✓ Contractor Name and Contact Person's name and telephone numbers
 - ✓ Verification that the Tenant has been instructed on insurance responsibilities and MDAD TAC-N procedures and requirements

The Manager, Planning ensures that the project is assigned a Project Number in accordance with Facilities Division Procedure FD1-020.

If the listed Managers or designees approve the Quick Check Form and the project does not require approval by the Miami-Dade Board of County Commissioners (BCC), the Manager, Properties and Commercial Operations issues a Concept Approval Letter to the tenant, advising the tenant to proceed with the project and addressing compliance with the MDAD Design Guidelines as applicable and compliance with the TAC-N design and construction procedures. The Manager, Properties and Commercial Operations forwards copies of the letter to the Assistant Aviation Director, Facilities Development, the Manager, Planning, and the MCC/TAC Chief, copying all attachments to the MCC/TAC Chief.

If the project requires approval by the Miami-Dade Board of County Commissioners (BCC), the Manager, Properties and Commercial Operations prepares the necessary documentation for presentation to the BCC requesting an amendment to the existing lease and to authorize the project.

Upon approval by the BCC, the Manager, Properties and Commercial Operations will send a letter, attaching copies of the executed lease amendment, the County Manager's memorandum, and the BCC resolution to the tenant advising the tenant to proceed with the project in accordance with the terms of the lease as approved by the BCC. The letter will constitute the Hand Off to the Facilities Division.

PROCEDURES for DESIGN and CONSTRUCTION

Upon receipt of the copy of the letter from Properties to the tenant, the MCC/TAC Chief shall prepare a New Project Memorandum providing details and requirements of the project and designating a TAC-N Project Manager.

1. The TAC-N Project Manager shall contact the tenant to review the design and construction process.
2. It is the responsibility of the tenant through its Architect/Engineer (A/E) and/or Contractor to:
 - Obtain copies of relevant as-built drawings from MDAD Technical Support Division (305-876-7057)
 - Verify field conditions, including but not limited to electrical, mechanical, HVAC, plumbing, water, sewer, structural, and connecting points for all utilities, HVAC, fire protection, and smoke evacuation systems.
 - Ensure that if the project is located at the MIA Terminal Complex, the design is in compliance with the MDAD Design Guidelines Manual (found at www.miami-airport.com). Exception: projects in the cargo areas and at the General Aviation Airports need only meet civil work Design Guidelines or as noted as per the terms of the lease.
 - Obtain an MDAD Miscellaneous Asbestos Recovery Contract Status Report for the project from MDAD Environmental Engineering Division (305-876-8326).
 - Coordinate schedules and locations for material deliveries to MIA with MDAD Landside Operations Division (305-876-7086).
 - Coordinate schedules and construction activities at MIA with MDAD Terminal Operations Division (305-876-7082).
 - Coordinate airside access at MIA with MDAD Airside Operations Division (305-876-7482).
 - Coordinate MIA identification badging and security orientation requirements with MDAD Safety and Security Operations Division (306-876-4028).
 - Coordinate utility information and issues, including shutdown procedures, with MDAD Maintenance Engineering (305-876-7477).
 - Coordinate requirements and specific procedures for obtaining Miami-Dade Department of Environmental Resources Management (DERM) and Florida Department of Environmental

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Protection (DEP) permits and for dewatering, excavating, trenching, stockpiling, maintenance and disposal of contaminated material activities with the MDAD Environment and Airport Engineering Division (305-869-1063).

3. Each sheet of the construction plans shall be identified with a title box that includes the following information:

PROPERTY OWNER:	MIAMI-DADE AVIATION DEPARTMENT	
ADDRESS:	P.O. BOX 025504, MIAMI, FLORIDA 33102-5504	
TAC-N PROJECT MANAGER:		
TAC-N PROJECT MANAGER PHONE:		FAX No. _____
PROJECT OWNER/ LESSEE:		
ADDRESS:		
TENANT PROJECT MANAGER:		
TENANT PROJECT MANAGER PHONE:		FAX No. _____

4. The TAC-N Project Manager shall determine at what design phase how many sets of construction documents shall be submitted for review.
5. The tenant or its A/E shall submit the required number of sets of documents to the TAC-N Project Manager.
6. The TAC-N Project Manager shall forward document sets to pre-determined reviewers. The documents shall be attached to a TAC-N Design Review Memorandum (Facilities Division Form FD3-061). The memorandum shall identify at what percent completion the drawings are and by what date review comments must be returned.
7. Concurrently to sending the review package the TAC-N Project Manager shall forward by email to the reviewers Chief a Design Review Transmittal (Facilities Division Form FD3-009), notifying them of the review process.
8. The TAC-N Project Manager shall submit the sets of Construction Documents to Consultants and MDAD staff for in-house Design Review. This process has a duration of fourteen (14) calendar days. The Reviewers will fax any issues/comments directly to the tenants A/E of Record and to the TAC-N Project manager within (14) calendar days of receipt of the plans. The tenant or tenants A/E shall confirm receipt of all Review Comments with the TAC-N Project Manager.
9. The TAC-N Project Manager shall ensure that comments and issues introduced by reviewers are discussed and resolved.
10. The tenant must submit for back-check, three sets of 100% construction documents with all reviewer-required changes incorporated. One of these sets must have the A/E of Record's signature and seal on every design sheet.
11. The 100% construction drawings submitted for back-check must be accompanied with notarized letter to the TAC-N Project Manager on the A/E's company's letterhead requesting a TAC-N Letter of Concurrence to be provided to the tenant (Facilities Division Form FD5-017). The A/E's letter must contain the following two paragraphs verbatim:

This letter will serve as our request for the issuance of your TAC-N Letter of Concurrence for the above referenced project that will allow the tenant to apply for a Building Permit.

As the tenant's Architect/Engineer of Record, we have satisfied all comments and issues originating from the TAC-N Design Review process by means of revisions to the 100% Construction Documents. These revisions will produce a project in

compliance with all MDAD and FAA requirements. Further, we realize that the final responsibility for the design and compliance with all applicable codes, standards, and ordinances rests solely with the tenant's Architect/Engineer of Record.

12. The TAC-N Project Manager shall advise the tenant of the Miami-Dade General Services Administration (GSA) Risk Management Division insurance requirements. Prior to the issuance of the MDAD Letter of Concurrence to the tenant, execution of contract documents by the tenant and its contractor, the tenant shall provide copies of all of the contractor's certificates of insurance to the TAC-N Project Manager who shall request MDAD Risk Management to review them. Upon satisfactory review and compliance with item thirteen (13) below, the MDAD Letter of Concurrence will be issued, unless there are more requirements as identified in item fourteen (14) below.
13. The TAC-N Project Manager shall review the submitted documents. The reviewers will be asked to sign a TAC-N Design Review 100% Back Check Form (Facilities Division Form FD3-062) indicating that their comments have been complied with and incorporated into the revised 100% final documents. It is the responsibility of the tenant's Consultants to obtain the reviewer's signature on the 100% back-check form.
14. For those TAC-N projects that require an amended Lease Agreement and as per the terms of the lease, the following documents must be submitted prior to the issuance of the Letter of Concurrence and prior to construction.
 - a) Performance and Payment Bonds in compliance with the terms of the Lease
 - b) Copy of the Building Permit
 - c) The Environmental Insurance Policy as applicable.
 - d) A check in the amount that represents 1% of the budgeted construction hard costs for reimbursement of MDAD Building Department fees.
 - e) Contract completion bond as applicable.
 - f) Insurance required.
15. Once all reviewers have signed the TAC-N Design Review 100% Back Check, the MCC/TAC Chief shall issue a Letter of Concurrence (Facilities Division Form FD5-017) enabling the tenant to apply for a building permit. **Absent the signature of the 100% back-check form indicating incorporation of the reviewer's comments in the back-check drawings, and all the requirements as listed in items twelve (12) thirteen (13) and fourteen (14), the Letter of Concurrence will not be issued.** The Letter of Concurrence will be valid for sixty (60) calendar days from date of issue. If the tenant or A/E of Record has not applied for a building permit within sixty (60) calendar days, a new Letter of Concurrence will have to be issued. The tenant must request the new Letter of Concurrence from the TAC-N Project Manager.
16. The tenant shall complete a Building Permit Application and submit it to the Miami-Dade Building Department Satellite Office on the Fourth Floor of Miami International Airport Building 5A. The Letter of Concurrence, a copy of the Miscellaneous Asbestos Recovery Contract (MARC) report, if required, and two (2) signed and sealed permit sets of the project 100% construction documents must be attached to the application. The Satellite Office may be reached at 305-869-1363.
17. The tenant shall select a contractor to perform the work.
18. The TAC-N Project Manager shall complete a Wrap-Up Insurance Program Notification of Contract Award (Facilities Division Form FD5-031, if applicable) and forward it to the Wrap-Up Insurance Program Broker, the Manager, Properties and Commercial Operations, MDAD Risk Management. Thereafter the TAC-N Project Manager issues a Notice to Proceed.

19. Prior to commencement of construction, the tenant shall submit copies of the Construction Schedule, the Design and Construction Budget, and the Building Permit to the TAC-N Project Manager. The tenant must also provide any revisions to these documents to the TAC-N Project Manager as they are issued.
20. The TAC-N Project Manager shall determine, based on the complexity and magnitude of the project, if a pre-construction meeting should be held and if regularly scheduled construction meetings are required. If required, the frequency of construction meetings will be based on the complexity and duration of the project. The tenant's A/E and contractor, the TAC-N Project Manager, or designee, and others, as may be required, will attend the construction meetings.
21. The TAC-N Project Manager, or designee, shall periodically visit the jobsite. The permit set of drawings must be available on the construction site at all times.
22. Depending on a project's complexity, at project completion a walk-through may be scheduled and coordinated by the TAC-N Project Manager.
23. Unless otherwise agreed, the tenant must submit to the TAC-N Project Manager copies of the following documents at project completion:
 - Signed off Building Permit Inspection (within twenty-four hours of issue)
 - Certificate of Occupancy or Certificate of Completion (within twenty-four hours of issue)
 - Warranties, manuals, instructions, etc. for any equipment that will be maintained by MDAD
 - As-Built drawings (record drawings) on bond paper, signed and sealed by the tenant's Architect of Record within thirty (30) days from issue of the Certificate of Occupancy or Completion. Depending on the size or complexity of the project, the tenant may be requested to provide the as-builts as mylar drawings, 35mm aperture cards, or digital files.
24. When the Certificate of Occupancy has been issued and all As-Built Records have been transferred to MDAD Technical Support Division, the TAC-N Project Manager and tenant shall close the project.

ASSOCIATED FORMS

- | | |
|-------------------------------------|--|
| 1. Facilities Division Form FD3-009 | Design Review Transmittal |
| 2. Facilities Division Form FD3-061 | TAC-N Design Review Memorandum |
| 3. Facilities Division Form FD3-062 | TAC-N 100% Back Check Sign-off Sheet |
| 4. Facilities Division Form FD5-017 | TAC-N Concurrence Letter |
| 5. Facilities Division Form FD5-031 | Wrap-Up Insurance Program Notification of Contract Award |

EXHIBIT C
STANDARDS OF CONSTRUCTION

EXHIBIT C
STANDARDS OF CONSTRUCTION

Exhibit C is incorporated by reference and is on file with the Miami-Dade County Aviation Department. That Exhibit contains Sensitive Security Information (SSI) and/or information related to airport structural and security details exempt from disclosure pursuant to 119.071, FL Stat. Persons authorized to review or access such information may do so by contacting the Miami-Dade County Aviation Department at:

Miami-Dade Aviation Department
P.O. Box 022504
Miami, FL 33102-5504



EXHIBIT A-1
PREMISES